Supreme Court, U.S
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No._____

In the Supreme Court of the United States

Haywood M Clayton, Petitioner

v

Ameriquest Mortgage Company

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a settlement agreement announced in open court conflicts with Title 26 of the United States Code for failure to state in exact arithmetic amounts the values of real property ordered transferred under penalty of sanction by the District Court and upheld by the Circuit Court;

Whether a settlement agreement announced in open court involving transfer of real estate must comply with North Carolina statutes compelling all such transactions be in writing although disputes between the parties to the settlement agreement precluded the agreement announced orally, being reduced to writing;

Whether an order compelling plaintiff to dismiss a state action filed by defendant has any basis in law sufficient to compel the state court to issue an order dismissing the action.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Plaintiff, Haywood M Clayton, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished *per curiam* opinion and is reproduced at App. 1-3. The opinion of the United States District Court for the Middle District of North Carolina is reproduced in the appendix at App. 4-15.

JURISDICTION

The court of appeals entered judgment on February 28, 2006. Appellants filed timely petitions for rehearing and

rehearing *en banc*, which the court of appeals denied on April 18, 2006. App. 16. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case concerns the validity of a settlement agreement entered into between the parties involving transfer of real estate and announced in open court on September 23, 2003 which was never reduced to writing due to disputes of content between the parties. The transcript of that oral announcement in open court is reproduced at App. 20-25.

The enforcement of the agreement by the court is challenged under Title 26 placing the settlement agreement under the taxing authority of Congress which is sufficient for review; the doctrine of *Stare Decisis* and comity with North Carolina General Statutes § 22-2 and N.C.R.Civ.P. Rule 41 reproduced at App. 26

STATEMENT

The underlying facts and case arise from an alleged breach of contract by Ameriquest in M y 1999 when an employee issued a counterfeit check in the name of plaintiff Haywood Clayton. This act was committed in the State of California and the check was drawn on an account (not that of Haywood Clayton) in New Jersey. Ameriquest has admitted to this fact. As a result of this and subsequent acts by Ameriquest including a long period of denial of the act; plaintiff informed Ameriquest in June 1999 of his intent to payoff the loan. Ameriquest refused to comply with requests for a payoff amount to both plaintiff and potential lenders to whom they furnished false and damaging information that the check was

issued by plaintiff and was in fact 'NSF'.

The petitioner filed a federal action May 28, 2002 in the MDNC captioned 1:02CV0415 based upon diversity among others including a claim of breach of contract.

On May 1, 2003; Ameriquest caused state action 03-SP-125[1] (a foreclosure action) to be filed in state court of

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[1]This was the third (3rd) foreclosure action filed on behalf of Ameriquest. The first was dismissed in September 2002 when the Orange County Superior Court found that Ameriquest had not complied with NCGS and that the Substitute Trustee (defendant Maitin) had made false representations to the court. While this illegally obtained foreclosure action was pending; Plaintiff Haywood Clayton used every legal method to avoid this foreclosure including bankruptcy filings to stay an order obtained improperly and with false statements. It was during this time that the TRO was granted by Judge Beaty (cited in the district court order at App. 5) which was faxed to Plaintiffs on July 11, 2002. Scheduled for hearing at 10AM that day (July 11, 2002) in state court was a motion to dismiss (cited by the district court as Plaintiffs 'seeking an order restraining foreclosure'. While word parsing grants that a dismissal would indeed 'restrain foreclosure' its use shows bias by the court against the Plaintiff and is misleading) which on merits was dismissed in September 2002 for earlier cited reasons. Judge Rand after offering recusal simply refused to rule on Plaintiffs' motion at that time (which would have allowed the sale to proceed under the improper foreclosure order. After appearing in state court at 10AM, there was simply not enough time to post a $5000 bond by noon; but a bankruptcy petition prepared the previous night as a safety net could be timely filed) Following the dismissal of the first foreclosure action, Plaintiff Haywood Clayton was sanctioned by the bankruptcy court and ordered to pay Ameriquest attorney fees for staying the illegal foreclosure action which had by that time been dismissed. Judge Beaty upheld those sanctions on appeal docketed as 1:03CV0083 (incorrectly cited by the district court order as an appeal of the dismissal) at App. 6. Plaintiffs successfully defended

North Carolina even though all claims and remedies and the underlying facts were already available to them in federal court. Petitioner/plaintiff removed the action to the MDNC for joinder with the federal action. Ameriquest opposed the removal, and the District Court remanded the case to the state jurisdiction. As such, the District Court was well aware that the petitioner was the respondant and lacked the legal standing pursuant to N.C.R.Civ.P. Rule 41 to dismiss the action (03-SP-125)[2] pursuant to the order currently before the court

The District Court ordered a pre-trial settlement conference on Sep 23, 2003 at which time Judge Beaty instructed that any settlement must be global and cover all claims in both state and federal court.

An agreement was announced in open court providing "mutual releases of all claims, know or unknown, wherever they may have been stated or are stated from the beginning of time until the present. That would include claims against Ameriquest, its employees, agents, related entities, its attorneys, and any claims that Ameriquest or any of those

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against a second foreclosure action in late 2002 and early 2003 (Ameriquest being represented by a second Substitute Trustee)

[2]The Docket Sheet of case 415 makes abundantly clear to the district court that Case 03-SP-125 was filed on behalf of Ameriquest (represented by a third substitute trustee) inasmuch as Plaintiffs' motion for TRO restraining a sale scheduled on 6/25/03 in Orange County was telephonically noticed for hearing at 4:00p.m. in Winston-Salem (approximately 90 miles from Plaintiffs' home in Chapel Hill). Instead, at hearing, Judge Beaty announced an un-noticed hearing in Case 1:03cv527 which was the case no for 03-SP-125 which had been removed from the state court, which he remanded (rendering moot the TRO hearing in '415') facilitating a next-day noon sale. Again fortuitous timing for the benefit of Ameriquest and the detriment of the Plaintiffs. Bias?

related entities may have back against the Claytons." App. 21

These claims included monetary awards from sanctions in the bankruptcy court for which the time of appeal had expired and 'were final', but were included in the global settlement. That agreement included a claim captioned 03-SP-125 *except* it was Ameriquest who was to dismiss this action instead of the petitioner. The District Court ordered the petitioner to file notice of dismissal (under threat of sanctions) which had no effect in the state court and allowed Ameriquest to leave an action from which they derived benefit and imputed liability to the petitioner in spite of explicit language announced in open court that "There's no admission of liability on the part of Ameriquest or on the part of the Plaintiffs" App. 22

Petitioner relied upon the common usages of the words "mutual releases of all claims" "wherever they *may have been stated or are stated"* "from the beginning of time until the present" as including 03-SP-125 filed five (5) months earlier by Ameriquest.

The order of the District Court that the petitioner dismiss 03-SP-125 is contrary to law and contrary to the explicit language of the oral settlement. Even the federal courts are not empowered to issue an order which is contrary to law. ". . .parties should be able to regulate their conduct and enter into relationships with the reasonable assurance of the governing rules of law." *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1998) 46 Cal. 3d. 287, 296 Absent the assurances contemplated in *Moradi* , a citizen has no standard by which to regulate their behavior inside or outside the judicial system consistent with a civilized society.

Fundamental to any contracted agreement involving transfer of property is an agreed upon arithmetic sum certain price. *Creech v. Melnick,* 347N.C. 520, 527, 495 S.E 2d. 907, 911-12 (1998) Absent a known sum certain dollar amount, compliance with Title 26 of the United States Code is impossible. Taxes may not be accurately filed nor the

statutorily mandated records be kept. This appears self-evident, and no case law found a contracted agreement which was enforced by the courts absent a sum certain amount. The District Court erred in ruling that Ameriquest was not obligated to supply tax documents to the petitioner. This was upheld by the Circuit Court in an unpublished *per curiam* judgment which is without precedential value. It is unclear: the intent of the court. To grant exception to Title 26 in this case is a departure from *Stare Decisis* and opens up the possibility of district court rulings which would not be in the public domain and allow powers to local judges not contemplated by the framers of the United States Constitution promoting barter and defeating Congressional authority to collect taxes. It could open up a pandora's box allowing rulings just because the presiding judge did not like the litigant.

It was the unmistakable understanding of the petitioner on 23 Sept 2003 that all mutual claims be dismissed and that the sum certain payoff of the existing loan or financial claims by Ameriquest be equal to the sum certain amounts for the two properties transferred to Ameriquest by petitioner by the agreement of 23 Sep 2003. This understanding, in no way, waived the obligation of Ameriquest to present a sum certain dollar amount acknowledging the value of the property transferred. Any less is contrary to Title 26 and beyond comprehension.

The role of the District Court was limited to the settlement agreement, whether or not it contained all the elements of an enforceable agreement, dismissed all claims by all parties and imputed liability to no one. The court has failed this role, and has in issuing orders that favor Ameriquest, imputed liability to the petitioner; made an order regarding dismissal of 03-SP-125 which is beyond comprehension; but effectively leaves one claim for the benefit of Ameriquest.

REASONS FOR GRANTING THE PETITION

Through Title 26, Congress mandated that sum certain records be maintained by taxpayers; that those records be supplied by entities consistent with that maintenance enabling citizens comply with the tax codes, filing and paying precise amounts to the Internal Revenue Service consistent with its Code. This case not only prevents petitioner from maintaining those records and filing accurate returns but exempts Ameriquest from the very mandates of that Title 26.

The singular document upon which is based the settlement agreement: the transcript of the 9/23/03 hearing App. 20-25: contains NO dollar amounts consistent with compliance with the tax code under Title 26.

To order the transfer of property without sum certain amounts constitutes new law, inasmuch as this petitioner can find no agreement which has been enforced absent a sum certain amount. Furthermore, it is contrary to North Carolina General Statutes § 22-2 compelling that agreements involving real estate be in writing.

The singular document upon which is based the settlement agreement: the transcript of the 9/23/03 hearing App. 20-25: contains NO dollar amounts consistent with consideration essential to a valid agreement, and was never reduced to writing consistent with N.C.G.S. § 22-2

The singular document upon which is based the settlement agreement: the transcript of the 9/23/03 hearing App. 20-25: contains NO statement consistent with the finding of the court (for the first time after Plaintiffs' repeated motions for amendment/modification asking specifically about 03-SP-125 that "The terms of that settlement agreement included a mutual release of all claims pending in any venue that was related to the foreclosure of the Claytons' home" App. 12

The singular document upon which is base the settlement agreement: the transcript of the 9/23/03 hearing

App. 20-25 DOES contain ". . .the parties are agreeing to mutual releases of all claims known or unknown wherever they may have been stated or are stated from the beginning of time to the present" NO language specifically excluding the foreclosure action is contained in App. 20-25 nor was it contemplated by the plaintiff/petitioner.

Finally, an order that a defendant/respondant dismiss that very state case, in which he is a defendant/respondant is not well grounded in law, for it lacks any force of law except for the act of compliance by the defendant/respondant, which in this case avoids sanctions by the District Court.

Petitioner solicits a special eye toward ambiguity and possible fraudulent intent which forms the possible basis for the conclusion of the district court that the foreclosure action (a claim covered by the "all claims . . .wherever. . .whenever" statement in App. 20-25) was excluded from the agreement. Furthermore, the actions by the district court on the cusp of scheduled foreclosure dates to allow the sale to go forward (even when the foreclosure action was obtained by false representation and ultimately dismissed) invites a special scrutiny to protect the integrity of the court.

The petitioner is *pro se* and as such may well make errors of form, from which petitioner requests the broadest possible latitude be given by the court. This court has the inherent power to correct its own records and rulings to speak the truth. A totality of circumstances review into the timing and actions of the district court support a divergence by the District and Circuit Court from customary and ordinary standards weigh strongly in favor of this Court's review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted this the 21st day of September 2006.

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App. 1

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-2011

HAYWOOD CLAYTON; SYLVIA CLAYTON — Plaintiffs-Appellants

v.

AMERIQUEST MORTGAGE COMPANY and LAWRENCE S. MAITIN; MORRIS, SCHNEIDER & PRIOR, LLC. — Defendant-Appellees

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No. 05-2346

HAYWOOD CLAYTON; SYLVIA K. CLAYTON — Plaintiffs-Appellants

v.

AMERIQUEST MORTGAGE COMPANY, and LAWRENCE S. MAITIN; MORRIS,SCHNEIDER & PRIOR, LLC. — Defendant-Appellees

App. 2

Appeal from the United States District Court
for the Middle District of North Carolina
No. CA02-415-1 - N. Carlton Tilley, Jr. Chief District Judge

Decided and Filed February 28, 2006

Before: WIDENER, NEIMEYER, and KING, Circuit Judges

Affirmed by unpublished per curiam opinion

Haywood Clayton, Sylvia K.Clayton, Appellants Pro Se. Dena Beth Langley, Stuart Carlen Gauffreau, NEXSEN PRUET ADAMS KLEEMEIER, PLLC Greensboro, North Carolina; Angel R. Gordon, MORRIS, SCHNEIDER & PRIOR, Atlanta, Georgia, for Appellee

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36©).

PER CURIAM:

In appeal No. 05-2011, Haywood Clayton and Sylvia K. Clayton appeal from the district court's order denying their motions for a stay, for a change of venue, and to vacate orders of the district court. In appeal No. 05-2346, Haywood Clayton appeals from the district court's orders granting Ameriquest's motions for an order to show cause and for prefiling injunction. We have reviewed the record and the district court's orders and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Clayton v. Ameriquest Mortgage Co., No. CA-02-415-1 (M.D.N.C. Aug 24, 2005 &

Oct 26, 2005). We deny Ameriquest's motion for sanctions and motion to dismiss appeal No. 05-2011. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

App. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HAYWOOD M CLAYTON
and SYLVIA CLAYTON

Plaintiffs

Case No. 1:02CV00415

vs

MEMORANDUM
ORDER

AMERIQUEST MORTGAGE CO
LAWRENCE S MAITIN; and MORRIS
SCHNEIDER & PRIOR LLC

Defendants

TILLEY, Chief Judge

This case arises between Plaintiffs Haywood and Sylvia Clayton ("the Claytons") and Defendant Ameriquest Mortgage Company[1] ("Ameriquest") and is currently before the Court on Defendant Ameriquest's Motion to Show Cause Why Plaintiffs Should Not Be Held in Civil Contempt [Doc #171] ("Motion to Show Cause")

For the reasons set forth below, it shall be ordered that Plaintiffs' Motion to Show Cause be GRANTED.

I.

This case relates to a promissory note executed by the

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[1]Ameriquest Mortgage Company is the only remaining defendant.

Claytons and a deed of trust on their Chapel Hill, N.C. residence which secured the note held by Defendant Ameriquest. Seeking to forestall foreclosure and to obtain other relief, the Claytons filed suit in both this Court (1:02CV00415 was filed on May 28, 2002) ("415" or "the 415 case") and in state court. When Ameriquest noticed foreclosure, Mr Clayton removed the state foreclosure action to this Court. (1:02CV00453) ("453") on June 10, 2002. Both cases were assigned to United States District Judge James A. Beaty, Jr., who, finding a lack of federal jurisdiction, remanded the 453 forfeiture case to the Orange County Superior Court on July 5, 2002. On July 8, 2002, the Claytons filed a motion in the 415 case [Docs #8,9] seeking a temporary restraining order ("TRO") preventing the foreclosure which had been set for July 11, 2002, in Orange County, North Carolina. The motion was submitted to Judge Beaty on July 9th and he entered an order [Doc. #10] on July 10, 2002, granting the TRO, contingent upon the posting of a $5000 bond. Notice of the order was given telephonically by the office of the Clerk of this Court to the Claytons on July 10th and the written order was faxed to the Claytons and to the Clerk of Court of Orange County on July 11th. Rather than post bond with this Court, Mr Clayton appeared in the Superior Court of Orange County on July 11th seeking an order restraining the foreclosure.[2] When Judge Rand did not grant a state TRO, Mr. Clayton – on that same day, July 11, 2002 – filed a bankruptcy petition, triggering the automatic stay provision and, thereby, halting the

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[2]According to Mr. Clayton, Judge Rand, the state judge, offered to recuse himself, stating that he had formerly been a lawclerk for Judge Beaty. From that statement, Mr. Clayton infers that there must have been some bias against him on the part of both Judge Rand and Judge Beaty. (Doc # 150; Trans. Of Nov 25, 2003 Hearing.)

scheduled foreclosure sale. The Claytons' appeal of the Bankruptcy Judge's dismissal of that petition with sanctions was docketed in this Court as 1:03CV0083 and assigned to Judge Beaty.

The case, the 415 case, proceeded on a tortuous track with a number of motions and responses being filed by both parties. After discovery was completed, the case was set for an October 6, 2003 trial. Notice was given to the parties on August 25, 2003 that a settlement conference would be held in Greensboro at 10 A.M. on September 23rd. On September 22nd, the Claytons moved for a change of venue and/or the recusal of Judge Beaty [Doc. # 134] based on the ground – stated on September 22, 2003 for the first time – that Judge Rand's statement on July 11, 2002 indicated some bias held by him and Judge Beaty.

During the settlement conference on September 23rd, the Claytons entered into a settlement agreement with Ameriquest, the terms of which were read into the record before Judge Beaty. The Claytons did not mention during that proceeding that they had filed a motion the previous day seeking to have Judge Beaty recuse himself. [Doc. # 149] The Claytons failed to comply with the terms of that agreement, however, and on October 6, 2003, Ameriquest filed a Motion to Enforce Settlement Agreement [Doc. # 141]. On November 25, 2003, during a hearing on that and other motions, including the motion for recusal, Judge Beaty recused himself, stating that while "there's no reasonable basis for it, just the perception that Mr. Clayton has raised [is] sufficient for this Court to recuse itself in this matter." [Doc. # 150, Trans. P. 65].

Following Judge Beaty's recusal, the undersigned held a hearing on December 12, 2003, to address Ameriquest's Motion to Enforce the Settlement Agreement. On April 5, 2004, the Court issued a Memorandum Opinion [Doc. # 155] and Order [Doc. # 156] granting Ameriquest's motion. The parties were ordered to take the following actions to effectuate

the terms of the settlement agreement:

(1) withdraw any and all motions for sanctions;
(2) withdraw any and all motions for attorney fees;
(3) withdraw any and all motions to vacate or amend orders;
(4) file voluntary dismissals of any and all appeals filed in this dispute;
(5) file notices of satisfaction of judgment as to any outstanding judgments;
(6) file notices of waiver of any attorneys' fees that have already been awarded; and
(7) file voluntary dismissals with prejudice as to all claims.

(April 5, 2004 Order, at 1 [Doc. # 156.]

On April 15, 2004, the Claytons filed a motion [Doc. # 158] requesting reconsideration and/or an amendment of the April 5 Order. The motion for reconsideration was denied in a Memorandum Order issued on June 18, 2004 [Doc. # 162]. The Claytons appealed both the April 5 Order and the June 18 Order [Doc. # 165]. [3] The Court of Appeals for the Fourth Circuit affirmed the Orders on December 29, 2004 [Doc. # 186].[4]

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[3]The Claytons also filed a Motion for Stay Pending Appeal [Doc. # 163] asking that the April 5 Order be stayed while they appealed it and the June 18 Order. The Motion for Stay was denied in a Memorandum Order issued August 17, 2004 [Doc. # 169].

[4]The Claytons also filed a Motion for Change of Venue and Motion to Vacate in November 2004 and Motion for Relief and Motion for Stay in January 2005. All these motions were either denied or rendered moot in an August 24, 2005 Memorandum Opinion and Order.

In October 2004 Ameriquest filed a Motion to Show Cause and Motion for Pre-filing injunction. Ameriquest's Motion to Show Cause claimed that the Claytons had not taken any of the steps outlined in the Court's April 5 Order. A hearing to address both of Ameriquest's Motions was noticed for September 6, 2005. On August 29, 2005, less than one week before the scheduled hearing and over sixteen months after the April 5 Order, Defendant filed a Memorandum to the Court [Doc. # 202] attaching copies of numerous filings made on that date in various courts and a document entitled "non-warranty deed". Additionally, after the hearing on September 6, 2005, the Claytons again filed a Memorandum to the Court [Doc.# 205], this time attaching two notices of withdrawals of motions for sanctions filed in various courts.

The Court will now consider Defendants' Motion to Show Cause Why Plaintiffs Should Not Be Held in Civil Contempt.

II.

The courts have the inherent power to enforce compliance with their lawful orders through civil contempt. See 18 U.S.C. § 401(3)[5]: Young v. United States ex.rel. Vuitton et Fils S.A., 481 U.S. 787, 795 (1987). Civil contempt may be imposed "to coerce obedience to a court order or to compensate the complainant for losses sustained as a result of the contumacy." In re General Motors, Corp., 61 F.3d 256, 258 (4th Cir. 1995). To establish civil contempt, there must be clear and convincing evidence of the following:

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[5]"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority and none other, as - . . .(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command." 18 U.S.C. 401

(1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) the decree was in favor of the party moving for contempt; (3) the alleged contemnor violated the terms of the decree by his conduct and had knowledge, at least constructive knowledge, of such violations; and (4) the moving party was harmed by the violation.

Ashcroft v. Conoco, Inc., 218 F.3d 288, 301 (4th Cir 2000). Wilfulness, however, is not an element of civil contempt. In re General Motors, 61 F.3d at 258. The burden of proving civil contempt is on the complainant. Id. Ameriquest has satisfied its burden by demonstrating through clear and convincing evidence that the Claytons have repeatedly violated the Order Enforcing the Settlement Agreement issued by this Court on April 5, 2004. Once this burden is satisfied, the appropriate remedy for civil contempt is within the court's broad discretion. Id. At 259

A.

Civil contempt is an appropriate sanction if an order of the Court "set[s] forth in specific detail an unequivocal command" which a party has violated. Id. The April 5 Ordetr Enforcing the Settlement Agreement was a valid decree. The terms of the Order are clear and unequivocal:

Specifically IT IS ORDERED that the parties take the following action, both in this Court and others, to effectuate the terms of the September 23, 2003 agreement:

(1) withdraw any and all motions for sanctions.

(2) withdraw any and all motions for attorneys' fees;

(3) withdraw any and all motions to vacate or amend orders;

(4) file voluntary dismissals of any and all appeals filed in this dispute;

(5)file notices of satisfaction of judgment as to any outstanding judgments;

(6) file notice of waiver of any attorneys' fees that have already been awarded; and

(7) file voluntary dismissals with prejudice as to all claims.

Further, IT IS ORDERED that Plaintiffs execute a warranty deed to Ameriquest, in accordance with the representations made as part of the settlement agreement.

The Order clearly stated that it was enforcing the terms of the settlement agreement entered by the parties in open court on September 23, 2003. Additionally, the Order listed the specific actions that need to be taken by the Claytons to achieve compliance. The Claytons have failed to complete all of these actions.

The Claytons have been repeatedly reminded by this Court and others that they did not have a stay and were to comply with the Order. The Claytons' motion to the Court to reconsider the April 5, 2005 Order was denied on June 18, 2004 [Doc. # 162]. The Claytons then appealed these two orders, and both appeals were denied on December 29, 2004. [Doc # 186]. At no point during this time were the Claytons granted a stay related to the April 5 Order. In fact, their Motion for Stay Pending Appeal was denied by this Court on August 17, 2004 [Doc. # 169]

It is also clear that the Claytons had knowledge of the Order and its terms entered on April 5, 2004. Their numerous motions discussed above, which directly addressed and cited that Order evidence not only constructive, but actual knowledge of the valid decree and its terms. [See Docs. # 158, #159, #163]. Additionally, the Claytons do not deny their knowledge, but rather continue to contend that the order is

wrong. Cf. Christian Science Board of Directors v. Robinson, 123 F.Supp 2d 965, 977 (W.D.N.C. 2000) (finding that the defendant's arguments that they were not in contempt because the rulings contained in the Judgment of the court were incorrect was not sufficient to withstand a finding of contempt).

B.

Additionally, the April 5, 2004 Order is clearly in the favor of Ameriquest. Ameriquest filed the Motion to Enforce Settlement Agreement {Doc. # 141]. The Claytons aggressively opposed this motion. Ameriquest has fully complied with the April 5 Order by voluntarily dismissing all claims against the Claytons with prejudice {Doc. # 157]. Finally, Ameriquest has taken the actions necessary not only for their compliance with the September 23, 2003 settlement agreement, but they have attempted on several occasions to assist the Claytons who are *pro se* litigants by providing them with drafts of the necessary filings and other documents. It is the Claytons who have failed in meeting their obligations under the April 5 Order.

C.

It is also clear that the Claytons' conduct since the April 5 Order has been in direct violation of that Order. See Ashcraft, 218 F.3d. At 301. For well over a year, from April 5, 2004 until August 29, 2005 the Claytons made no attempt to comply with any provisions of the Order. In fact, not until August 29, 2005, less than one week before the date scheduled for a hearing on Defendant's Motion to Show Cause, did the Claytons take any action to comply with the order. On August 29, 2005, the Claytons filed a Memorandum to the Court attaching copies of documents filed on that date taking some of

the actions mandated by the April 5 Order. Although their efforts comply with the April 5 Order were tardy, several of these filings are consistent with the Order's provisions. Additionally, after a hearing was held in this matter on September 6, 2005, the Claytons filed a Memorandum to the Court, attaching several more documents filed on September 12, 2005 withdrawing their outstanding motions for sanctions [Doc. # 205]. [6]

However, the Claytons are still not in full compliance with the April 5 Order. The following actions have not been taken by the Claytons:

(1) Voluntary dismissal of Orange County Case No. 03 SP 125

(2) Execution of a General Warranty Deed; and

(3) Dismissal of Orange County Superior Court Case No. 04 CVS 1706

The purpose of the April 5, 2005 Order was to enforce the settlement agreement that the Claytons had entered into with Ameriquest. The terms of that settlement agreement included a mutual release of all claims pending in any venue that was related to the foreclosure of the Claytons' home by Ameriquest. Additionally, the supporting Memorandum Opinion accompanying that Order stated "it is clear the parties agreed to release all claims and withdraw all motions, in any court, regarding this dispute" [Doc # 155]. It is just as clear,

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[6]It is noted that the two Withdrawals of Motions for Sanctions attached to the Memorandum to the Court were only signed by Plaintiff Haywood Clayton, if Plaintiff Sylvia Clayton joined in the original Motions for Sanctions, her absences from these Withdrawals of Motions for Sanctions is also a violation of the Order.

however, that the Claytons not only have refused to dismiss one of the related claims in state court, Orange County Case No. 03 SP 125, but they have also filed an additional action against Ameriquest, Orange County Superior Court Case No. 03 CVS 760. Although the Claytons argue that these are not covered by the April 4 Order[7], it is clear that they both arise out of the foreclosure of their home, are related to or arise out of events occurring before the settlement agreement, and are brought against Ameriquest and its agents.

Additionally, the terms of the settlement agreement and Order enforcing this agreement were very clear that the Claytons were to "execute a warranty deed to Ameriquest, in accordance with the representations made as part of the settlement agreement" [Doc. # 155]. During the settlement conference the following exchange took place:

MR GAFFREAU: [T]he parties are agreeing to convey title to. . .a piece of property that is adjacent to the house and lot that are the subject of this action and that have been foreclosed upon; and they've represented that the lot is free of liens, judgments, and any other encumbrances. . .

[T]he Plaintiffs have agreed to indemnify Ameriquest for any expenses they may incur. . .if it turns out that any of those representations turn out not to be true. . .

They've also represented that there are no taxes due and owing with regard to that property. . .

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[7]Mr Clayton claimed in the September 6, 2005 hearing that Case No. 03 SP 125 is an exclusive state matter that he will not dismiss and Case No. 03 CVS 760 arises out of actions by Ameriquest and the substitute trustee after the September 23rd settlement conference.

(Tr. Settlement Conf. At 2-6) On August 29, 2005, the Claytons filed a copy of what they called a *non-warranty* deed with the Court. This document is not in compliance with either the settlement agreement or the April 5 Order which both require that a *warranty* deed regarding the adjacent lot be executed.

D.

Finally, there is no question that the refusal of the Claytons to comply with the Order Enforcing Settlement Agreement has resulted in harm to Defendant Ameriquest satisfying the final factor of civil contempt. See Ashcraft, 218 F.3d at 301. Since April 5, 2004, Ameriquest has been forced to respond to numerous motions and make several court appearances, in this Court and in others.[8]

In response to each of these motions, Ameriquest has expended time, money and other legal resources in order to file responses. Id. At 259 (imposing civil contempt sanctions in part because company has been forced to expend considerable resources to correct or thwart the effects of blatant misconduct of the other party in various courts).

Additionally, the Claytons' failure to execute the warranty deed for the lot adjacent to their former residence, in violation of the April 5 Order has resulted in complications and costs for Ameriquest in their relationship with the buyers of the Claytons' former residence. Ameriquest relied on the Claytons' assurances that a warranty deed would be provided and thus risks being in breach of contract for conveying the same information to the buyers of the Claytons' former

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[8]In the 415 case alone, the Claytons have filed eight motions and taken two appeals to the Fourth Circuit of Appeals since the April 5 Order

residence.

III.

Based on the foregoing, Ameriquests' Motion to Show Cause Why Plaintiffs Should Not Be Held in Civil Contempt [Doc. # 171] is GRANTED. Accordingly, the Plaintiffs are ordered to take all of the actions with respect to this dispute:

(1) Dismiss *all* claims against Ameriquest; and

(2) Execute a Warranty Deed.

From the date of this order, the Claytons have seven days to submit copies of documents showing their full compliance with the April 5 Order of this court. If such documents showing full compliance with the April 5 Order are not received by this Court within fourteen days of the date of this Memorandum Order, the Claytons will be ordered to appear on November 21, 2006 at 9:30 a.m. to show cause why they should not be held in civil contempt.

This the day of October 26, 2005

/s/ N. Carlton Tilley, Jr.
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
April 18, 2006

No. 05-2011
CA-02-415-1

HAYWOOD CLAYTON; SYLVIA CLAYTON — Plaintiffs-Appellants

v.

AMERIQUEST MORTGAGE COMPANY and LAWRENCE S. MAITIN; MORRIS, SCHNEIDER & PRIOR, LLC. — Defendant-Appellees

No. 05-2346
CA-02-415-1

HAYWOOD CLAYTON; SYLVIA K. CLAYTON — Plaintiffs-Appellants

v.

AMERIQUEST MORTGAGE COMPANY, and LAWRENCE S. MAITIN; MORRIS,SCHNEIDER & PRIOR, LLC. — Defendant-Appellees

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On Petition for Rehearing and Rehearing En Banc

The appellants' petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Entered for a panel composed of Judge Widener, Judge Niemeyer, and Judge King.

For the Court,

/s/ Patricia S. Connor

CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
April 26, 2006

No. 05-2011
CA-02-415-1

HAYWOOD CLAYTON; SYLVIA CLAYTON — Plaintiffs-Appellants

v.

AMERIQUEST MORTGAGE COMPANY and LAWRENCE S. MAITIN; MORRIS, SCHNEIDER & PRIOR, LLC. — Defendant-Appellees

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AMERIQUEST MORTGAGE COMPANY, and LAWRENCE S. MAITIN; MORRIS,SCHNEIDER & PRIOR, LLC. — Defendant-Appellees

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MANDATE

The judgment of this Court, entered 2/28/06, takes effect this date

A certified copy of this Court's judgment and a copy of its decision are issued to the district court and constitute the mandate of this Court.

/s/ Patricia S. Connor

CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HAYWOOD M CLAYTON and
SYLVIA K. CLAYTON
Plaintiffs,

v

AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; MORRIS, SCHNEIDER & PRIOR, LLC,
Defendants

Docket No. 1:02CV415

Winston-Salem,
North Carolina
September 23, 2003

TRANSCRIPT OF SETTLEMENT CONFERENCE
BEFORE THE HONORABLE JAMES A BEATY, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Plaintiffs: HAYWOOD M CLAYTON, Pro Se
SYLVIA K. CLAYTON, Pro Se
Post Office Drawer 2255
Chapel Hill, North Carolina 27515

Defendants: STUART C. GAFFREAU, ESQUIRE
Post Office Box 3463
Greensboro, North Carolina 27402

Court Reporter: Lori Russell, RMR, CRR
P.O. Box 20593
Winston-Salem, North Carolina 27120

Proceedings reported by stenotype reported.
Transcript produced by Computed-Aided Transcription

PROCEEDINGS

THE COURT: Again the Court is returning with respect to the settlement conference in the case of Haywood M. Clayton, et. al., and Ameriquest Mortgage is the only party remaining at this time.

Mr. Gauffreau, is there some matter you wish to bring to the Court's attention?

MR GAUFFREAU: Yes, Your Honor. Stuart Gauffreau with the law firm of Adams Kleemeier representing Ameriquest Mortgage in this matter.

I'm pleased to report we have reached a settlement with the Plaintiffs in this matter and a number of other matters; and if I may, Your Honor, I'd like to go over the terms. It may be somewhat disjointed in that I haven't had a chance to simulate it all, but I'll go through it. And if there's some further clarification we need to get with the Claytons, I'd ask that we do that at this time.

Your Honor, as I understand it, the parties are agreeing to mutual releases of all claims known or unknown wherever they may have been stated or are stated from the beginning of time until the present. That would include claims against Ameriquest, its employees, agents, related entities, its attorneys, and any claims that Ameriquest or any of those related entities may have back against the Claytons.

The parties would agree to dismissals with prejudice to all claims that are pending against one another in this action, in the actions that are pending in state court, in bankruptcy court, at the Fourth Circuit, and other actions in the Middle District of North Carolina, which I think covers the landscape of all pending actions involving the parties.

THE COURT: That includes any motions for sanctions or motions for attorney's fees that may be outstanding; is that correct?

MR. GAUFFREAU: Yes, Your Honor, and any orders or

judgments that have already been issued granting relief to Ameriquest or to the Claytons in that regard. Those would bewaived by both Ameriquest and the Plaintiffs.

In addition, Your Honor, the Plaintiffs are agreeing to convey title to an adjacent property, a piece of property that is adjacent to the house and the lot that are the subject to this action and that have been foreclosed upon; and they've represented that the lot id free of liens, judgments, and any other encumbrances. They are not aware of any environmental issues involving that adjacent lot and those representations are – are with respect to the property as of the date of the - - of the agreement.

And the - - the Plaintiffs have agreed to indemnify Ameriquest for any expenses that they may incur as a result of any - - if it turns out that any of those return out not to be true.

I think I've covered what those representations were. I just want to be sure I'm not leaving anything out.

THE COURT: All right, sir.

MR. GAUFFREAU: They have also represented there are no taxes due and owing with regard to that property.

We haven't discussed this, but I will represent and I think the Plaintiffs will agree that I will prepare a settlement agreement that incorporates these terms, and we will then present a consent judgment to the Court for entry that incorporates the terms of the settlement agreement.

There's no admission of liability on the part of Ameriquest or on the part of the Plaintiffs.

Your Honor, to the best of my recollection, rifling through my notes, I think that covers the issues the Plaintiffs agree to.

THE COURT: The parties are aware and at the parties' suggestion the Court had contact with the state court judge, Judge Barber, Wade Barber of Orange County, advising him of the discussions that were ongoing here and inquired of the court whether or not a consent judgment entered in this court as to any matters related to this Defendant or the other

Defendants would have full effect and credit within the state court; and it was my understanding from Judge Barber that that would be true and to make that known to the parties; that you're indicating as a part of this settlement any claims that are pending in state court will be disposed of and you'll be asking the court to accept the consent judgment reached in this case as evidence of the binding effect of the agreement with respect to the Court's - - in state court.

Is that correct?

MR GAUFFREAU: That's correct, Your Honor.

MR. CLAYTON: That's correct, Your Honor.

THE COURT: Mr. Clayton, Mrs. Clayton, Mr. Gauffreau has laid out the terms of the settlement agreement. The only matters that remain to be done are the formalization of the settlement agreement and the execution of any documents that are necessary for that. Are you recommending to the Court that the Court accept this as the consent judgment in this case resolving all matters in this court and any other courts of other jurisdiction?

MR. CLAYTON: Yes, Your Honor.

MS. CLAYTON: Yes, Your Honor.

THE COURT: You understand that by making that acknowledgement today the Court will sign off on the consent judgment once it's reached and that will - - and this today is the final resolution of the matter. The only thing awaiting is the Court's signature on the document that will be filed; but as far as the Court is concerned, this matter will be fully completed today based upon those representations that have been made.

MR. CLAYTON: Happily so, Your Honor.

THE COURT: Mrs. Clayton, you understand that?

MS. CLAYTON: Yes, Sir.

THE COURT: Anything further you wish to add to what Mr. Gauffreau has mentioned in terms of the terms or were there other matters you thought should have been included

that were not included?

MR. GAUFFREAU: Your Honor, if I may, I did omit any discussion about the foreclosure itself and the Claytons vacating of the premises. I believe that we are in agreement that the Claytons will vacate as of midnight on Saturday, the 27th of September, and that the property will be, as is customary, will be clean and free of debris, no fixtures removed, will be suitable for transfer to Ameriquest.

THE COURT: Is that part of your understanding as well, Mr. Clayton?

MR. CLAYTON: That is our understanding.

MS. CLAYTON: Yes.

THE COURT: I believe included as a part of that that any motions pending, and particularly in mind what was scheduled before Judge Barber tomorrow morning, that will be waived and this consent judgment will cover that as well.

MR. CLAYTON: Yes, Your Honor.

MS. CLAYTON: Yes.

THE COURT: Mr. Gauffreau, I will leave it to you and with Mr. Clayton's cooperation for you to contact the trial court administrator and Judge Barber's office to let them know the disposition of this matter.

MR. GAUFFREAU: Yes, Your Honor.

MR. CLAYTON: (Nods head.)

THE COURT: Anything further?

MR. GAUFFREAU: No, Your Honor.

THE COURT: The Court will note for the record that this matter has been settled and fully settled based upon the representations made by both parties this date to this date to the Court.

Thank you very much Mr. And Mrs. Clayton.

Thank you, Mr. Gauffreau, for your efforts in this matter.

Anything further to come before the Court?

MR. GAUFFREAU: No, Your Honor.

MR. CLAYTON: No, Your Honor.

THE COURT: Let me just inquire just for the Clerk's purposes when the Court can anticipate the consent judgment being prepared and presented to the Court.

MR. GAUFFRAU: Your Honor, I hope to have something for Mr. And Mrs. Clayton to review by Friday at the latest, and then perhaps we can get that turned around to the Court by the first part of next week, if that suits you.

THE COURT: All right, sir.

Mr. Clayton, is that satisfactory?

MR. CLAYTON: That's acceptable, Your Honor.

THE COURT: All right. Well, thank you very much. The Court is now in recess until further notice.

MR. CLAYTON: Thank you, Your Honor.

(Proceedings concluded at 5:50 p.m.)

CERTIFICATE

I, LORI RUSSELL, RMR, CRR, United States District Court Reporter for the Middle District of North Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of the proceedings had in the within-entitled action; that I reported the same in stenotype to the best of my ability; and thereafter reduced same to typewriting through the use of Computed-Aided Transcription.

Date: /s/ 11/24/03

/s/
Lori Russell, RMR, CRR
Official Court Reporter

North Carolina General Statutes § 22-2. Contract for sale of land; leases. All contracts to sell or convey any lands, tenements or hereditaments, in any interest in or concerning them, and all leases and contracts for leasing land for the purpose of digging for gold or other minerals, or for mining generally, of whatever duration; and all other leases and contracts for leasing lands, exceeding in duration three years from the making thereof, shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

North Carolina General Statutes 1A-1 Rules of Civil Procedure Rule 41. Dismissal of actions. (a) Voluntary Dismissal; effect thereof - (1) By Plaintiff; by stipulation. - Subject to the provisions of Rule 23(c) and of any statute of this State, an action or any claim therein may be dismissed by th plaintiff without order of court. . . . .(2) By Order of Judge. . .

OPPOSITION BRIEF

No. 06-448

FILED
NOV 29 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

HAYWOOD M. CLAYTON,

Petitioner,

v.

AMERIQUEST MORTGAGE COMPANY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Did the Fourth Circuit Court of Appeals correctly affirm the District Court's conclusions that the settlement agreement at issue did not concern tax reporting obligations and that petitioner's contentions about tax reporting obligations provide no basis for relief from enforcement of the settlement agreement?

2. Did the Fourth Circuit Court of Appeals correctly affirm the District Court's holding that the settlement agreement at issue did not violate North Carolina's statute of frauds?

3. Did the Fourth Circuit Court of Appeals correctly affirm the District Court's order directing petitioner to dismiss and withdraw his filings in a related state court matter pursuant to the terms of the settlement agreement at issue?

CORPORATE DISCLOSURE STATEMENT

Respondent Ameriquest Mortgage Company ("Respondent" or "Ameriquest") is not a publicly-held company, and no publicly-held company owns 10% or more of its stock. Ameriquest does have a parent corporation – ACC Capital Holdings, Inc.

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ADDITIONAL UNDERLYING OPINIONS AND ORDERS[1]

In his Petition, Petitioner Haywood M. Clayton ("Petitioner" or "Mr. Clayton") omits reference to and citation of several underlying opinions and orders that are at issue. Mr. Clayton petitions for writ of certiorari regarding an opinion of the Fourth Circuit Court of Appeals (the "Fourth Circuit") that addressed two separate appeals, Case No. 05-2011 and Case No. 05-2346, which were consolidated by the Fourth Circuit before it issued its opinion that provides the basis for the instant Petition.

Case No. 05-2011 involved an appeal of an August 24, 2005 Memorandum Opinion and Order of the United States District Court for the Middle District of North Carolina (the "District Court") denying motions for change of venue, to vacate certain District Court orders, and for relief from a District Court order.[2] The District Court's August 24, 2005 Memorandum Opinion and Order (collectively, the "August 24, 2005 Order") are submitted herewith as Resp. App. 1-19.

Case No. 05-2346 involved an appeal of two District Court orders entered on October 26, 2005: (1) an Order granting Ameriquest's Motion to Show Cause why the Claytons should not be held in civil contempt; and (2) an Order granting Ameriquest's Motion for a Pre-Filing

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[1] Herein, references to Petitioner's Appendix will be cited as "App. ___" and references to Respondent's Appendix, submitted herewith, will be cited as "Resp. App. ___."

[2] Petitioner and his spouse, Sylvia K. Clayton ("Mrs. Clayton") (collectively, "the Claytons") were both parties to the underlying District Court action and to appeal Case No. 05-2011.

Injunction against the Claytons.[3] In his Petition, Mr. Clayton refers to and includes in his Appendix a copy of the Order granting Ameriquest's Motion to Show Cause. App. 4-15. However, the Petition fails to reference or include a copy of the Order granting Ameriquest's Motion for a Pre-Filing Injunction. A copy of the Order granting Ameriquest's Motion for a Pre-Filing Injunction is submitted herewith as Resp. App. 20-30.

Additionally, both appeals at issue in the Petition arise out of an April 5, 2004 Memorandum Opinion and Order of the District Court granting Ameriquest's Motion to Enforce the Settlement Agreement, which Settlement Agreement is at the heart of the matters raised in the Petition. The District Court's April 5, 2004 Memorandum Opinion and Order (collectively, the "April 5, 2004 Order") are submitted herewith as Resp. App. 31-40.

Finally, the April 5, 2004 Order was itself the subject of a Motion for Reconsideration filed by the Claytons in the District Court and subsequent unsuccessful appeal filed by the Claytons with the Fourth Circuit. The District Court's June 18, 2004 Memorandum Order denying the Claytons' Motion for Reconsideration of the April 5, 2004 Order is submitted herewith as Resp. App. 41-43. The Fourth Circuit's denial of the Claytons' appeal of the April 5, 2004 Order and of the June 18, 2004 Memorandum Order in appeal Case No. 04-1849 is submitted herewith as Resp. App. 44-45.

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[3] Mrs. Clayton was not a party to appeal Case No. 05-2346, nor is she a party to the instant Petition.

COUNTERSTATEMENT OF CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

In his Petition, Mr. Clayton incorrectly asserts that the constitutional and statutory provisions at issue are Title 26 of the United States Code (the Internal Revenue Code), Section 22-2 of the North Carolina General Statutes (the North Carolina Statute of Frauds regarding contracts for the sale of land), and Rule 41(a) of the North Carolina Rules of Civil Procedure (regarding dismissal of actions). As set forth below, none of these authorities is properly implicated by Mr. Clayton's Petition.

Rather, the only issue before the Court is whether the District Court and the Fourth Circuit correctly enforced a valid and binding Settlement Agreement between Ameriquest and the Claytons and correctly directed the Claytons to comply with their obligations pursuant to the Settlement Agreement.

STATEMENT OF THE CASE

INTRODUCTION

The underlying proceedings arise out of the failure of the Claytons to make their required mortgage payments to Ameriquest, Ameriquest's subsequent efforts to foreclose on the Claytons' residence consistent with the terms of its loan to the Claytons, the Claytons' numerous efforts to prevent a foreclosure and to seek relief from Ameriquest, and the Claytons' refusal to abide by the terms of a settlement agreement they reached with Ameriquest to resolve all disputes between them.

CORRECTION OF MISSTATEMENTS IN PETITION

In the "Statement" contained in his Petition, Petitioner misstates numerous facts.[4] Petitioner incorrectly asserts that Ameriquest refused to comply with his requests to obtain a payoff amount for his mortgage with Ameriquest. To the contrary, Ameriquest prepared and sent payoff information concerning the Claytons' mortgage on more than one occasion to the only third-party lender identified by the Claytons to Ameriquest.

Petitioner also incorrectly asserts that it was improper for Ameriquest to pursue foreclosure actions in state court because all claims and remedies were available to Ameriquest in the underlying federal court action. To the contrary, the state courts of North Carolina had exclusive jurisdiction over Ameriquest's remedy of foreclosure.

Petitioner suggests that the courts have been biased against him and in favor of Ameriquest. Petitioner's claims of bias have been reviewed by numerous courts at numerous levels and have always been determined to be unfounded.

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[4] In the "Statement" section of his Petition, Petitioner veers into the realm of argument and covers much of the same ground he later covers in the "Reasons for Granting the Petition" section of his Petition. Ameriquest disagrees with the arguments made in the "Statement" section of the Petition and, in order not to be deemed to have waived its objections to them, Ameriquest incorporates herein by reference the arguments contained in the "Reasons for Denying the Petition" section below.

SUMMARY OF RELEVANT FACTUAL AND PROCEDURAL HISTORY

In May of 2002, the Claytons filed the underlying action, which was the first of many actions in the District Court, the Court of Appeals for the Fourth Circuit, the United States Bankruptcy Court, the North Carolina Superior Court (Orange County), the North Carolina Court of Appeals, and the Supreme Court of North Carolina undertaken by the Claytons to challenge their mortgage with Ameriquest and Ameriquest's efforts to foreclose.

On April 7, 2003, Barden W. Cooke, Substitute Trustee for the Deed of Trust, executed by the Claytons in favor of Ameriquest to secure the Claytons' mortgage with Ameriquest, initiated a foreclosure action (Case No. 03-SP-125) in the Superior Court of Orange County, North Carolina (the "State Court Foreclosure Action"). Despite numerous challenges to the State Court Foreclosure Action raised by the Claytons in various courts, the Superior Court of Orange County, North Carolina ordered that the foreclosure sale could proceed, and the sale took place on September 5, 2003. Ameriquest was the last and highest bidder at the foreclosure sale.

On September 10, 2003, the Claytons filed a Petition for Writ of Supersedeas and Motion for Temporary Stay with the Supreme Court of North Carolina in an attempt to prevent the September 5, 2003 foreclosure sale from becoming final. The Claytons' Petition for Writ of Supersedeas and Motion for Temporary Stay was denied on September 11, 2003. The foreclosure sale became final on September 15, 2003, and title to the Claytons' former residence passed to Ameriquest on September 16, 2003.

On September 23, 2003, during the District Court's scheduled Settlement Conference prior to trial of the underlying action, Ameriquest and the Claytons agreed to resolve the underlying case and all other matters in dispute between them (the "Settlement Agreement"). The terms of the Settlement Agreement were approved that day by the District Court and entered on the record. App. 20-25.

Ameriquest and the Claytons subsequently were unable to reach an accord on a written document embodying the terms of the Settlement Agreement, and the Claytons then refused to comply with their obligations pursuant to the Settlement Agreement. Ameriquest filed a Motion to Enforce the Settlement Agreement, and the Claytons opposed such Motion and asserted numerous other challenges to the settlement in various courts.

On April 5, 2004, the District Court issued a Memorandum Opinion and corresponding Order granting Ameriquest's Motion to Enforce Settlement Agreement. Resp. App. 31-40. The District Court stated that "it is clear the parties agreed to release all claims and withdraw all motions, in any court, regarding this dispute." Resp. App. 36. Among its other rulings, the District Court directed that the Parties "file voluntary dismissals with prejudice as to all claims" and that they do so "both in this Court and in others." Resp. App. 37.

Following the District Court's April 5, 2004 Memorandum Opinion and Order, Ameriquest, which had already complied fully with the District Court's ruling, requested by letter dated April 15, 2004 that the Claytons do the same. Resp. App. 46-54 [excerpt of filing in District Court

containing letter]. The Claytons never responded to this letter.

Instead, the Claytons moved the District Court to reconsider its April 5, 2004 Order, and, on June 18, 2004, the District Court denied their Motion for Reconsideration. The District Court ordered "that [the Claytons] comply with the terms of this Court's April 5, 2004 Order." Resp. App. 43. The Claytons did not do so.

On June 28, 2004, the Claytons filed a Notice of Appeal of the District Court's April 5, 2004 Order and June 18, 2004 Order. Their appeal was docketed in the Fourth Circuit as Case No. 04-1849 (the "2004 Appeal"). On December 29, 2004, the Fourth Circuit affirmed the District Court's April 5, 2004 Order and June 18, 2004 Order. Neither the Claytons collectively, nor Petitioner individually, filed a petition for writ of certiorari regarding the 2004 Appeal.

Also on June 28, 2004, the Claytons filed a Motion for Stay Pending Appeal, seeking a stay of the April 5, 2004 Order that enforced the Settlement Agreement and directed the Claytons, *inter alia*, to file various dismissals and withdrawals with prejudice. On August 17, 2004, the District Court issued an Order denying their Motion for Stay Pending Appeal.

Following the District Court's August 17, 2004 denial of the Claytons' request for a stay of the April 5, 2004 Order, Ameriquest again requested by letter dated August 23, 2004 that the Claytons comply with the terms of that Order. Resp. App. 55-59 [excerpt of filing in District Court containing letter]. The Claytons never responded to this letter.

On September 7, 2004, the Claytons filed a new lawsuit against Ameriquest in the Superior Court of Orange County, North Carolina (the "New Action"). The Claytons did so despite (a) the April 5, 2004 Order enforcing the Settlement Agreement, (b) the June 18, 2004 Order denying the Claytons' Motion for Reconsideration, and (c) the August 17, 2004 Order denying the Claytons' Motion for Stay Pending Appeal. In the New Action, all of the Claytons' purported claims: (a) were released by the Claytons in the Settlement Agreement enforced by the District Court's April 5, 2004 Order; and/or (2) were ordered to be dismissed with prejudice by the District Court's April 5, 2004 Order.

Accordingly, on October 12, 2004, Ameriquest filed in the District Court a Motion to Show Cause why the Claytons should not be held in civil contempt and a Motion for a Pre-Filing Injunction against the Claytons. The Claytons opposed those motions and also filed in the District Court a motion for change of venue, a motion to vacate the Settlement Agreement, a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure for relief from the April 5, 2004 order enforcing the Settlement Agreement (the "Rule 60 Motion"), and a motion for stay (collectively, "the Claytons' Post-Settlement Motions").

On August 24, 2005, the District Court issued a Memorandum Opinion and Order denying the Claytons' Post-Settlement Motions. Resp. App. 1-19. On September 6, 2005, the Claytons filed a Notice of Appeal of this Order, and their appeal was docketed in the Fourth Circuit as Case No. 05-2011 and is one of the appeals giving rise to the instant Petition.

On September 6, 2005, the District Court conducted a hearing on Ameriquest's Motion to Show Cause and Motion for Pre-Filing Injunction. On September 7, 2005, the Superior Court of Orange County, North Carolina conducted a hearing on various motions in the New Action and in a related foreclosure proceeding. Excerpts of the transcripts of these hearings are submitted herewith as Resp. App. 64-79.[5] At the September 7, 2005 hearing, the court dismissed the New Action and entered a state court pre-filing injunction against the Claytons.

On October 26, 2005, the District Court issued Orders granting Ameriquest's Motion to Show Cause (App. 4-15) and Motion for Pre-Filing Injunction (Resp. App. 20-30). On November 25, 2005, Petitioner (but not Mrs. Clayton) filed a Notice of Appeal of these Orders, and his appeal was docketed in the Fourth Circuit as Case No. 05-2346 and is the other appeal giving rise to the instant Petition.

On February 16, 2006, the Fourth Circuit consolidated Case No. 05-2011 and Case No. 05-2346. On February 28, 2006, the Fourth Circuit affirmed the District Court's denial of the Claytons' Post-Settlement Motions and affirmed the District Court's grant of Ameriquest's Motion to Show Cause and Motion for Pre-Filing Injunction. App. 1-3.

On March 13, 2006, Petitioner (but not Mrs. Clayton) filed a Petition for Rehearing and Petition for Rehearing En Banc. On April 18, 2006, the Fourth Circuit denied the

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[5] Ameriquest submitted the full transcripts of both hearings to the Fourth Circuit as part of its efforts to dismiss and obtain sanctions in appeal Case No. 05-2011. Resp. App. 60-79.

Petition for Rehearing and Petition for Rehearing En Banc, and the mandate issued. App. 16-19.

On July 17, 2006, Petitioner filed a Petition for Writ of Certiorari with this Court (the "Original Petition"). Resp. App. 80-87. On July 24, 2006, the Clerk sent a letter to Petitioner informing him that the form of the Original Petition failed to comply with the Rules of the Court. Resp. App. 88-89. The Clerk instructed Petitioner regarding what procedural changes needed to be made in order to have the petition conform with the Rules of the Court, informed him that he had 60 days to within which to submit a corrected petition, and admonished him as follows: "When making the required corrections to a petition, *no change to the substance of the petition may be made*" (emphasis added). Resp. App. 89.

On September 21, 2006, Petitioner filed his "corrected" petition (the "Resubmitted Petition"), which petition was docketed on September 28, 2006. In his cover letter to the Clerk regarding the Resubmitted Petition (Resp. App. 90), Mr. Clayton refers to the procedural changes he made, but makes no mention of any substantive changes. However, in the Resubmitted Petition, Petitioner made numerous substantive additions to the Original Petition.

REASONS FOR DENYING THE PETITION

The Court should deny certiorari for the threshold reason that Petitioner violated the clear directive of the Court by making numerous substantive changes and additions in his Resubmitted Petition. Moreover, the decision of the Fourth Circuit in affirming the District

Court's orders enforcing the Settlement Agreement between Ameriquest and the Claytons and directing the Claytons to comply with their obligations pursuant to the Settlement Agreement does not conflict with a decision of this Court or any federal Court of Appeals or decide a federal question in a way that conflicts with the Supreme Court of North Carolina or other state court of last resort. The Fourth Circuit's decision has not departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by the District Court. In rendering its decision in this case, the Fourth Circuit affirmed the District Court's reliance upon and application of clear, well-established and unquestioned Fourth Circuit precedent as well as the District Court's rational application of other persuasive authority and reasonable interpretation of the parties' obligations pursuant to the Settlement Agreement at issue. In short, there is no compelling reason for this Court to review the Fourth Circuit's decision.

ARGUMENT

I. The Petition Should Be Denied Because Petitioner Included Substantive Additions To The Original Petition In Violation Of The Court's Admonition Not To Do So.

In the Resubmitted Petition, Petitioner made numerous substantive additions to the Original Petition in violation of the Court's admonition not to change the substance of the Petition.

Specifically, Petitioner added two lengthy footnotes which inaccurately report numerous facts and procedural

history and improperly suggest that there has been judicial bias directed against him. Resubmitted Petition 3-4. Neither of these footnotes, nor the information contained within them, was included in the Original Petition (compare Resubmitted Petition 3-4 with Resp. App. 83-84).

In addition, Petitioner added lengthy arguments at pages 7-8 of the Resubmitted Petition that were not included in the Original Petition (compare Resubmitted Petition 7-8 with Resp. App. 86-87). The four separate paragraphs on page 7 of the Resubmitted Petition beginning with the words "The singular document" do not appear in any form or fashion in the Original Petition. Similarly, the paragraph on page 8 of the Resubmitted Petition beginning with the words "Petitioner solicits a special eye" does not appear in any form or fashion in the Original Petition.

From the Original Petition to the Resubmitted Petition, Mr. Clayton has more than doubled the "Reasons for Granting the Petition" section and has added more than a page of new (and inaccurate) information to the "Statement" section. This is a clear and knowing violation of the Clerk's instruction to Petitioner that: "When making the required corrections to a petition, *no change to the substance of the petition may be made*" (emphasis added). Resp. App. 89. Accordingly, the Court should deny certiorari.

II. The Fourth Circuit Correctly Affirmed The District Court's Conclusions That The Settlement Agreement At Issue Did Not Concern Tax Reporting Obligations And That Petitioner's Contentions About Tax Reporting Obligations Provide No Basis For Relief From Enforcement Of The Settlement Agreement.

In his Petition, Mr. Clayton alleges that Ameriquest failed to provide him with certain tax forms which prevented him from filing accurate tax returns and argues that Ameriquest's alleged failure to do so invalidates the Settlement Agreement. Petitioner's contentions in that regard ignore the District Court's holding in the August 24, 2005 Order that:

> The Claytons' allegation that Ameriquest somehow violated the settlement agreement and/or defrauded them by not providing them with the proper tax forms similarly does not support 60(b) relief. *The April 2004 Order does not even address the question of tax forms, so it is unclear how this allegation has any bearing on the Motion for Relief from that Order; nor were the tax forms at issue (Forms 1098 and 1099-A) mentioned in the settlement agreement. Even if the failure to provide tax forms did constitute a violation of the settlement agreement, which it does not, it would not form the basis for relief under 60(b)(2), (3), or (6).* Most importantly, however, the Claytons' allegations fall far short of showing that Ameriquest engaged in misconduct that "prevented the moving party from fully presenting its case." *Schultz [v. Butcher]*, 24 F.3d [626,] 631 [(4th Cir. 1994)]. The Claytons have not shown that there are grounds for relief under

> [Rule] 60(b)(2), (3), or (6), and the Motion for Relief must be DENIED.

Resp. App. 15-16 (emphasis added) (footnote omitted).

The District Court also noted that: "In the event the Claytons had further concerns about the tax forms, Ameriquest has offered to furnish the appropriate forms to them." Resp. App. 16 n.7. At the state court hearing on September 7, 2005, Petitioner acknowledged on the record that he had received the tax forms at issue from Ameriquest. Resp. App. 72-73.

As held by the District Court and affirmed by the Fourth Circuit, (1) no term of the Settlement Agreement at issue addresses or refers to the parties' tax reporting obligations or otherwise implicates Title 26 of the United States Code; and (2) Ameriquest's alleged failure to provide certain tax forms to the Claytons in a timely manner provides no basis for relief from the orders enforcing the Settlement Agreement. Moreover, Petitioner has admitted on the record that Ameriquest has provided him with the very tax forms about which he continues to complain in the instant Petition about *not* receiving. Petitioner's contentions about tax reporting obligations and compliance with Title 26 are unfounded and moot, are irrelevant to this action, and provide no basis for the Court to grant certiorari.

III. The Fourth Circuit Correctly Affirmed The District Court's Holding That The Settlement Agreement At Issue Did Not Violate North Carolina's Statute Of Frauds.

Petitioner contends that the Settlement Agreement violates North Carolina's Statute of Frauds because it

provides for the transfer of real estate but was not in writing (even though it was announced in open court and its terms were placed on the record). Petitioner's contentions misstate the applicable facts and law and are not part of the appeals regarding which the Petition was filed.

First, Petitioner's Statute of Frauds arguments were part of appeal Case No. 04-1849 (Resp. App. 91-106 [the Claytons' Informal Brief in appeal Case No. 04-1849]), which is *not* one of the appeal cases giving rise to Mr. Clayton's right to seek certiorari in the instant Petition. Judgment was entered in appeal Case No. 04-1849 on December 29, 2004, and neither the Claytons collectively nor Mr. Clayton individually filed a petition for writ of certiorari within 90 days of entry of judgment in that appeal.

Second, the District Court, in its June 18, 2004 Memorandum Order denying the Claytons' Motion for Reconsideration of the April 5, 2004 Order (later affirmed by the Fourth Circuit in appeal Case No. 04-1489), analyzed the Statute of Frauds arguments and held:

> North Carolina law establishes that the purpose of the Statute of Frauds is to avoid fraud. *House v. Stokes*, 66 N.C. App. 636, 641, 311 S.E.2d 671, 675 (1984). In accordance with this purpose, the provision has not been construed literally, and the word "void" should actually be interpreted as "voidable." *Herring v. Volume Merch., Inc.*, 249 N.C. 221, 224, 106 S.E.2d 197, 200 (1958).
>
> It does not appear that North Carolina courts have addressed directly the issue of whether the Statute of Frauds applies to oral settlement agreements. However, to interpret the Statute of Frauds to apply to a settlement agreement, the

> terms of which are announced in open court and entered upon the record, would be inconsistent with the Statute's purpose of avoiding fraud. There is no reasonable concern of fraud when an agreement is discussed in open court in the presence of both parties. Cases in other jurisdictions support this view and have found that the Statute of Frauds does not apply to settlement agreements accepted by a court. *See. e.g., Byblos Corp. v. Salem Farm Realty Trust*, 141 N.H. 726, 731, 692 A.2d 514, 517 (1997) (stating that "settlements that involve land conveyances are excepted from the statute when they are finalized under court supervision"); *Szymkowski v. Szymkowski*, 104 Ill. App. 3d 630, 634, 432 N.E.2d 1209, 1212 (1982) (stating that "[t]he safeguards of the Statute of Frauds are fully met when a settlement agreement is reached in open court in the presence of the parties"); *Owens v. Lombardi*, 41 A.D.2d 438, 440, 343 N.Y.S.2d 978, 981 (1973) (stating that "a settlement agreement will not be impaired because of any restrictions of the Statute of Frauds").
>
> *In short, North Carolina's Statute of Fraud provision does not apply to the settlement agreement at issue.* Therefore, even had Plaintiffs provided grounds for this Court to reconsider its April 5, 2004 Order, Plaintiffs' substantive argument regarding the Statute of Frauds is without merit.

Resp. App. 42-43 (emphasis added).

In his Petition, Mr. Clayton does not address the District Court's holding regarding his Statute of Frauds argument or come forward with any contrary authority. The District Court's holding, affirmed by the Fourth Circuit, is a reasonable and authoritative construction of a

North Carolina state statute, and it is this Court's policy and practice to defer to and accept such a construction.

The Supreme Court typically "defer[s] to the construction of a state statute given it by the lower federal courts . . . to reflect [the Court's] belief that district courts and courts of appeals are better schooled in and more able to interpret the laws of their respective states." *Frisby v. Schultz*, 487 U.S. 474, 482, 108 S.Ct. 2495, 2501, 101 L.Ed.2d 420 (1988) (citation omitted). *See Virginia v. American Booksellers Assn., Inc.*, 484 U.S. 383, 395, 108 S.Ct. 636, 643, 98 L.Ed.2d 782 (1988) ("This Court rarely reviews a construction of state law agreed upon by the two lower federal courts."). It is this Court's "practice to accept a reasonable construction of state law by the Court of Appeals 'even if an examination of the state-law issue without such guidance might have justified a different conclusion.' " *Haring v. Prosise*, 462 U.S. 306, 314 n.8, 103 S.Ct. 2368, 2374 n.8, 76 L.Ed.2d 595 (1983).

IV. The Fourth Circuit Correctly Affirmed The District Court's Order Directing Petitioner To Dismiss And Withdraw His Filings In A Related State Court Matter Pursuant To The Terms Of The Settlement Agreement At Issue.

The terms of the Settlement Agreement were recited on the record and agreed to by Ameriquest and the Claytons. App. 20-25. Among the agreed terms were the following:

> [T]he parties are agreeing to *mutual releases of all claims* known or unknown wherever they may have been stated or are stated from the beginning of time until the present. That would include claims against Ameriquest, its employees,

> agents, related entities, its attorneys, and any claims Ameriquest or any of those related entities may have back against the Claytons.
>
> The parties would agree to *dismissals with prejudice to all claims* that are pending against one another in this action, *in the actions that are pending in state court*, in bankruptcy court, at the Fourth Circuit, and other actions in the Middle District of North Carolina, which I think covers the landscape of all pending actions involving the parties.

App. 21 (emphasis added). As the District Court noted in the April 5, 2004 Order, "it is clear the parties agreed to release all claims and withdraw all motions, *in any court*, regarding this dispute." Resp. App. 36 (emphasis added).[6]

Petitioner contends that the District Court erred in concluding that the Settlement Agreement obligated him (and not Ameriquest) to dismiss the State Court Foreclosure Action and that the District Court lacked authority to direct him to dismiss the State Court Foreclosure Action. As with Petitioner's other grounds, these contentions are incorrect factually and misstate the law.

First, there can be no dispute that Petitioner was aware that the dismissals contemplated by the Settlement Agreement regarding the State Court Foreclosure Action and enforced by the District Court were dismissals of his own filings in the Action, regardless of who filed the Action

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[6] During the parties' recitation of the terms of the Settlement Agreement, the District Court specifically confirmed that the parties agreed to dismissals with prejudice of, among other things, "any motions for sanctions or motions for attorney's fees that may [have been] outstanding." App. 21-22.

in the first place, and not necessarily dismissal of the Action itself. For example, in letters from Ameriquest's counsel to the Claytons following the April 5, 2004 Order and the District Court's denial of the Claytons' motion to stay that Order, it is clear that the dismissals requested by Ameriquest pursuant to the Settlement Agreement (and enforced by the District Court) refer to the Claytons' July 8, 2003 Motion for Sanctions and September 5, 2003 Notice of Appeal in the State Court Foreclosure Action.[7] If the Claytons had no pending requests for relief in the State Court Foreclosure Action, then there would have been nothing for them to dismiss (or withdraw) in the Action.

On August 29, 2005, the Claytons filed a Notice of Withdrawal regarding their July 8, 2003 Motion for Sanctions (Resp. App. 107-110), but they did not, at that time, withdraw or dismiss their September 5, 2003 Notice of Appeal. Also on August 29, 2005, the Claytons filed a Motion for Relief in the State Court Foreclosure Action seeking dismissal of that Action and an unwinding of the completed foreclosure. That Motion was one of the matters heard (and denied) in state court on September 7, 2005 (Resp. App. 65-70) and was pending and specifically referred to during the September 6, 2005 hearing in the District Court when Ameriquest argued that the Claytons

[7] In addition to the letters from Ameriquest's counsel, there are numerous other matters of record demonstrating Petitioner's knowledge that what was at issue was dismissal of his pending requests for relief in the State Court Foreclosure Action, not the Action itself. For example, in two filings with the Fourth Circuit, Petitioner specifically complains about being compelled by the District Court "to dismiss all appeals and other legal defenses to the foreclosure action." Resp. App. 111-117 [excerpts of filings in appeal Case No. 05-2011].

had failed to uphold their settlement obligations regarding the State Court Foreclosure Action (Resp. App. 76-79).

Finally, on September 19, 2005, the Claytons filed a Notice of Appeal regarding the state court's denial of their Motion for Relief in the State Court Foreclosure Action. When the District Court issued its October 26, 2005 Order granting Ameriquest's Motion to Show Cause and directed the Claytons to "dismiss" the State Court Foreclosure Action, the Claytons' September 5, 2003 Notice of Appeal and September 19, 2005 Notice of Appeal remained open.

Thus, Petitioner cannot now argue that he lacked notice or understanding of his obligations to dismiss or withdraw his still-pending filings in the State Court Foreclosure Action. It is factually incorrect for Petitioner to contend that there was nothing for him to dismiss in the State Court Foreclosure Action simply because he did not initiate that action.

Second, with respect to Petitioner's contention that Ameriquest should have been required to dismiss the State Court Foreclosure Action, there can be no dispute that, as of the September 23, 2003 Settlement Agreement, the foreclosure of the Claytons' residence had already taken place and title had passed to Ameriquest. These facts were well understood by the Claytons when they entered into the Settlement Agreement. As noted above, on September 10, 2003, the Claytons filed a Petition for Writ of Supersedeas and Motion for Temporary Stay with the Supreme Court of North Carolina in an attempt to prevent the September 5, 2003 foreclosure sale from becoming final. The Claytons' Petition for Writ of Supersedeas and Motion for Temporary Stay was denied on September 11, 2003. The foreclosure sale became final on September 15,

2003, and title to the Claytons' former residence passed to Ameriquest on September 16, 2003.

Moreover, the recitation of the terms of the September 23, 2003 Settlement Agreement included the following: "[T]he Claytons are agreeing to convey title [to Ameriquest] to an adjacent property, a piece of property that is adjacent to the house and the lot that are the subject of this action and *that have been foreclosed upon. . . .* " App. 22 (emphasis added). The Claytons agreed to this term as stated, without objection. The Claytons also affirmed on the record their understanding that they would vacate their residence as a result of the foreclosure. App. 24. Thus, there was no aspect of the State Court Foreclosure Action for Ameriquest to dismiss pursuant to the Settlement Agreement (other than a Motion for Sanctions, which Ameriquest withdrew with prejudice in April 2004 after the April 5, 2004 Order was issued).

Third, Petitioner ignores the facts and applicable law in arguing that the District Court, in enforcing the Settlement Agreement, lacked authority to direct him to take action in state court matters. As part of the Settlement Agreement, in addition to agreeing to mutual releases of all claims and to dismissals of all claims, including those in state court, Petitioner and Ameriquest explicitly agreed to the following statements by the District Court:

> THE COURT: The parties are aware and at the parties' suggestion the Court had contact with the state court judge, Judge Barber, Wade Barber of Orange County, advising him of the discussions that were ongoing here and inquired of the court whether or not a consent judgment entered in this court as to any matters related to this Defendant or the other Defendants would

have full effect and credit within the state court; and it was my understanding from Judge Barber that that would be true and to make that known to the parties; *that you're indicating as a part of this settlement any claims that are pending in state court will be disposed of and you'll be asking the court to accept the consent judgment reached in this case as evidence of the binding effect of the agreement with respect to the Court's – in state court.*

Is that correct?

MR. GAUFFREAU [Counsel for Ameriquest]: That's correct, Your Honor.

MR. CLAYTON: That's correct, Your Honor.

THE COURT: Mr. Clayton, Mrs. Clayton, Mr. Gauffreau has laid out the terms of the settlement agreement. The only matters that remain to be done are the formalization of the settlement agreement and the execution of any documents that are necessary for that. Are you recommending to the Court that the Court accept this as the consent judgment in this case *resolving all matters in this court and any other courts of other jurisdiction?*

MR. CLAYTON: Yes, Your Honor.

MS. CLAYTON: Yes, Your Honor.

THE COURT: You understand that by making that acknowledgement today the Court will sign off on the consent judgment once it's reached and that will – and this today is the final resolution of the matter. The only thing awaiting is the Court's signature on the document that will be filed; but as far as the Court is concerned,

this matter will be fully completed today based upon those representations that have been made.

MR. CLAYTON: Happily so, Your Honor.

THE COURT: Mrs. Clayton, you understand that?

MS. CLAYTON: Yes, Sir.

* * *

THE COURT: I believe included as a part of that that any motions pending, and particularly in mind what was scheduled before Judge Barber tomorrow morning, that will be waived and this consent judgment will cover that as well.

MR. CLAYTON: Yes, Your Honor.

MS. CLAYTON: Yes.

THE COURT: Mr. Gauffreau, I will leave it to you and with Mr. Clayton's cooperation for you to contact the trial court administrator and Judge Barber's office to let them know the disposition of this matter.

MR. GAUFFREAU: Yes, Your Honor.

MR. CLAYTON: (Nods head.)

App. 22-23 (emphasis added).

Thus, the District Court made clear and the Claytons knowingly and explicitly agreed on the record that the Settlement Agreement would have full force and effect on the parties' rights and obligations in any state court matters, which included, by definition, the State Court Foreclosure Action.

In addition, whether or not the Claytons agreed or understood that the Settlement Agreement required them to file dismissals or withdrawals in the State Court Foreclosure Action, the District Court had the authority to direct them to do so to effectuate the agreement reached by the parties. For example, the District Court had the inherent authority, as noted and applied by the District Court in its April 5, 2004 Order, to enforce all of the terms of a settlement agreement reached in a case pending before it:

> When a settlement is reached in a case pending before it, a trial court has the authority to enforce the terms of that settlement. The Fourth Circuit has stated that "[t]rial courts possess the inherent authority to enforce a settlement agreement and to enter judgment based on an agreement without a plenary hearing." *Petty v. Timken Corp.*, 849 F.2d 130, 132 (4th Cir. 1988) (enforcing settlement agreement that was reached at a pre-trial conference, approved by the judge, and entered on the record).

Resp. App. 35-36. *See also, e.g., Sheng v. Starkey Laboratories, Inc.*, 117 F.3d 1081 (8th Cir. 1997) (affirming enforcement of settlement agreement reached at judicial settlement conference despite parties' subsequent inability to agree on ancillary matters such as tax treatment of payment and despite parties' mutual ignorance of unknown and unknowable conditions); *Wilson v. Wilson*, 46 F.3d 660 (7th Cir. 1995) (affirming enforcement of oral settlement reached at pretrial conference where settlement terms reviewed in open court on the record without objection).

Finally, there can be no dispute that the All Writs Act empowers federal courts to take whatever action is necessary to effectuate its orders and judgments, including actions that impact federal court litigants' rights in other forums.[8] *See, e.g., U.S. v. New York Telephone Co.*, 434 U.S. 159, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977) (holding that power conferred by All Writs Act extends to non-parties in a position to frustrate the implementation of a court order or the proper administration of justice); *In re Baldwin-United Corp.*, 770 F.2d 328 (2d Cir. 1985) (when a federal court has jurisdiction over its case in chief, All Writs Act permits the court to issue writs necessary or appropriate in aid of that jurisdiction, including writs that enjoin or otherwise impact state court matters); *In re American Honda Motor Company, Inc.*, 162 F.Supp.2d 387 (D.Md. 2001) (following global settlement of claims in federal Multidistrict Litigation proceedings, district court invoked powers under All Writs Act to bar recovery in state court of award covered by settlement).

With respect to the authority conferred to federal courts by the All Writs Act, this Court has stated:

> This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained: "This statute has served since its inclusion, in substance, in the

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[8] The All Writs Act provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a).

> original Judiciary Act as a 'legislatively approved source of procedural instruments designed to achieve "the rational ends of law."' " . . . Indeed, "[u]nless appropriately confined by Congress, a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it." . . . The Court has consistently applied the Act flexibly in conformity with these principles.

U.S. v. New York Telephone Co., 434 U.S. at 172-173, 98 S.Ct. at 372.

Therefore, no grounds exist for this Court to grant certiorari based on Petitioner's erroneous contentions (1) that the District Court lacked authority to direct the Claytons to file dismissals and withdrawals in the State Court Foreclosure Action pursuant to the terms of the Settlement Agreement reached in the underlying action or (2) that the courts below erred in not requiring Ameriquest to dismiss a foreclosure action from which all relief had been obtained prior to the parties' entry into the Settlement Agreement.

V. There Is No Compelling Reason For This Court To Invoke Its Discretionary Authority To Review The Fourth Circuit's Decision.

Supreme Court Rule 10 states, in pertinent part, that:

> Review on a writ of certiorari is not a matter of rights, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's

discretion indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; . . .
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

"Compelling" or "important" reasons sufficient to grant certiorari relate to problems beyond the academic or episodic the resolution of which impacts the public and not just the particular litigants. *See, e.g., Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 73, 75 S.Ct. 614, 616, 99 L.Ed. 897 (1955).

As set forth above, the decision of the Fourth Circuit in affirming the District Court's orders enforcing the

Settlement Agreement between Ameriquest and the Claytons and directing the Claytons to comply with their obligations pursuant to the Settlement Agreement does not conflict with a decision of this Court or any federal Court of Appeals or decide a federal question in a way that conflicts with the Supreme Court of North Carolina or other state court of last resort. The Fourth Circuit's decision has not departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by the District Court. Petitioner's contentions are unfounded, are not compelling or important, and in no way implicate the public interest.

VI. Because The Petition Was Filed By Mr. Clayton Alone, The Relief Available To Him Is Limited To Relief Related Only To His Individual Rights.

Supreme Court Rule 12.6 states, in part, that: "Parties who file no document will not qualify for any relief from this Court." *See, e.g., Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 119 n.14, 105 S.Ct. 613, 621, n.14, 83 L.Ed.2d 523 (1985) (petitioner for writ of certiorari cannot assert the right of others to recover damages against respondent). Despite the fact that Mrs. Clayton is a party to the underlying action, is a party to the Settlement Agreement at issue, and had joint ownership interests in the Claytons' foreclosed-upon residence and in the conveyed-by-settlement adjacent lot, Mr. Clayton is the sole Petitioner to this Court. Thus, the only relief available to Mr. Clayton from this Court is relief that affects his individual rights and not those that cannot be separated from the rights of Mrs. Clayton.

By his Petition, Mr. Clayton seeks review of (and, ultimately, relief from) Orders enforcing the Settlement Agreement to which Mrs. Clayton is a party, which in turn would affect the underlying action and other actions in which Mrs. Clayton is a party and affect claims regarding real property in which Mrs. Clayton has an ownership interest. It is not clear whether Mr. Clayton has any individual rights at stake in this matter that are separate from rights he shares with Mrs. Clayton, a non-petitioner. Whatever individual rights Mr. Clayton may have, if any, the relief available to him from this Court must be limited, accordingly, to such individual rights.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted, this the 29th day of November, 2006.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA**

HAYWOOD M. CLAYTON and SYLVIA CLAYTON, Plaintiffs, v. AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; and MORRIS, SCHNEIDER & PRIOR, LLC, Defendants.	)	1:02CV00415

MEMORANDUM OPINION

(Filed Aug. 24, 2005)

TILLEY, Chief Judge

This case arises between Plaintiffs Haywood and Sylvia Clayton ("the Claytons") and Defendant Ameriquest Mortgage Company[1] ("Ameriquest") and is currently before the Court on the following motions:

1. Plaintiffs' Motion for a Change of Venue [Doc. #176],
2. Plaintiffs' Motion to Vacate Orders [Doc. #183] ("Motion to Vacate"),
3. Plaintiffs' Motion for Relief from Order of This Court [Doc. #187] ("Motion for Relief"), and

[1] Ameriquest Mortgage Company ("Ameriquest') is the only remaining defendant.

4. Plaintiffs' Motion for Stay on Motion for New Judgment [Doc. #189] ("Motion for Stay").

Also currently pending are Defendant Ameriquest's Motion to Show Cause Why Plaintiffs Should Not Be Held in Civil Contempt [Doc. #171] ("Motion to Show Cause") and Motion for a Pre-Filing Injunction Against Plaintiffs [Doc. #174].

For the reasons which follow, Plaintiffs' Motion to Vacate, Motion for Relief, and Motion for Change of Venue will be DENIED. Plaintiffs' Motion for Stay is thereby rendered MOOT. Defendant's motion to show cause and motion for a pre-filing injunction will be addressed at a later date in a hearing to be noticed by the court.

I.

This case relates to a promissory note executed by the Claytons and a deed of trust on their Chapel Hill, N.C. residence which secured the note held by Defendant Ameriquest. Seeking to forestall foreclosure and to obtain other relief, the Claytons filed suit in both this Court (1:02CV00415 was filed on May 28, 2002) ("415" or "the 415 case") and in state court. When Ameriquest noticed foreclosure, Mr. Clayton removed the state foreclosure action to this court (1:02CV00453) ("453") on June 10, 2002. Both cases (415 and 453) were assigned to United States District Judge James A. Beaty, Jr., who, finding a lack of federal jurisdiction, remanded the 453 forfeiture case to the Orange County Superior Court on July 5, 2002. On July 8, 2002, the Claytons filed a motion in the 415 case [Docs. #8, 9] seeking a temporary restraining order ("TRO") preventing the foreclosure which had been set for July 11, 2002, in Orange County, North Carolina. The

motion was submitted to Judge Beaty on July 9th and he entered an order [Doc. 10] on July 10, 2002, granting the TRO, contingent upon the posting of a $5,000 bond. Notice of the order was given telephonically by the office of the Clerk of this Court to the Claytons on July 10th and the written order was faxed to the Claytons and to the Clerk of Court of Orange County on July 11th. Rather than post the bond with this Court, Mr. Clayton appeared in the Superior Court of Orange County on July 11th seeking an order restraining the foreclosure. According to Mr. Clayton, Judge Rand, the state judge, offered to recuse himself, stating that he had formerly been a lawclerk for Judge Beaty. From that statement, Mr. Clayton infers that there must have been some bias against him on the part of both Judge Rand and Judge Beaty. (Doc. 150; Trans. of Nov. 25, 2003 hearing)

When Judge Rand did not grant a state TRO, Mr. Clayton – on that same day, July 11, 2002 – filed a bankruptcy petition, triggering the automatic stay provision and, thereby, halting the scheduled foreclosure sale. The Claytons' appeal of the Bankruptcy Judge's dismissal of that petition with sanctions was docketed in this Court as 1:03CV0083 and assigned to Judge Beaty.

This case, the 415 case, proceeded on a tortuous track with a number of motions and responses being filed by both parties. After discovery was completed, the case was set for an October 6, 2003 trial. Notice was given to the parties on August 25, 2003 that a settlement conference would be held in Greensboro at 10 A.M. on September 23rd. On September 22nd, the Claytons moved for a change of venue and/or the recusal of Judge Beaty [Doc. #134] based on the ground – stated on September 22, 2003 for the first time – that Judge Rand's statement on July

11, 2002 indicated some bias held by him and Judge Beaty.[2]

During the settlement conference on September 23rd, the Claytons entered into a settlement agreement with Ameriquest, the terms of which the parties read into the record before Judge Beaty. The Claytons did not mention during that proceeding that they had filed a motion the previous day seeking to have Judge Beaty recuse himself. [Doc. #149]

The Claytons failed to comply with the terms of that agreement, however, and on October 6, 2003, Ameriquest filed a Motion to Enforce Settlement Agreement [Doc. #141]. On November 25, 2003, during a hearing on that and other motions, including the motion for recusal, Judge Beaty recused himself, stating that while "there's no reasonable basis for it, just the perception that Mr. Clayton has raised [is] sufficient for this Court to recuse itself in this matter." [Doc. #1 50, Trans. p. 65].

Following Judge Beaty's recusal, the undersigned held a hearing on December 12, 2003, to address Ameriquest's Motion to Enforce the Settlement Agreement. On April 5, 2004, the Court issued a Memorandum Opinion [Doc. #155] and Order [Doc. #156] granting Ameriquest's motion. The parties were ordered to take the following

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[2] A review of the 415 case docket sheet reveals that between July 11, 2002 and the filing of the recusal motion on September 22, 2003, the Claytons had filed sixteen motions, nine briefs, four notices, eight responses, and five objections, including an objection to Ameriquest's present counsel being added to the case on the ground that allowing Ameriquest another attorney would be unfair since the Claytons were proceeding *pro se*. (Doc. 40).

actions to effectuate the terms of the settlement agreement:

(1) withdraw any and all motions for sanctions;

(2) withdraw any and all motions for attorneys' fees;

(3) withdraw any and all motions to vacate or amend orders;

(4) file voluntary dismissals of any and all appeals filed in this dispute;

(5) file notices of satisfaction of judgment as to any outstanding judgments;

(6) file notices of waiver of any attorneys' fees that have already been awarded; and

(7) file voluntary dismissals with prejudice as to all claims.

Order of April 5, 2004, at 1 [Doc. #156].

On April 15, 2004, the Claytons filed a motion [Doc. #158] requesting reconsideration and/or an amendment of the April 5 Order. The motion for reconsideration was denied in a Memorandum Order issued June 18, 2004 [Doc. #162]. The Claytons appealed both the April 5 Order and the June 18 Order [Doc. #165].[3] The Court of Appeals for the Fourth Circuit affirmed the Orders on December 29, 2004 [Doc. #186].

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[3] The Claytons also filed a Motion for Stay Pending Appeal [Doc. #163] asking that the April 5 Order be stayed while they appealed it and the June 18 Order. The Motion for Stay was denied in a Memorandum Order issued August 17, 2004 [Doc. #169].

In October 2004 Ameriquest filed the Motion to Show Cause and Motion for Pre-Filing injunction, and in November 2004 the Claytons filed the Motion for Change of Venue and Motion to Vacate, all of which are currently before the Court.

On January 10, 2005, the Claytons also filed the Motion for Relief and the Motion for Stay that are now pending.

II.

The Motion to Vacate the September 23, 2003, settlement agreement [Doc. #183] and the Motion for Relief from the Order of April 5, 2004, enforcing the settlement agreement [Doc. #187] are the most recent of the Claytons' several attempts to avoid their settlement agreement with Ameriquest. They opposed Ameriquest's motion to enforce the agreement [see Doc. #146]. After the Order of April 5, 2004 ("April 2004 Order") enforcing the settlement agreement was issued, they filed a motion for reconsideration of the Order [#158] (which was denied); they appealed the April 2004 Order [Doc. #165] (the Order was affirmed by the Court of Appeals); and filed a motion in this Court [Doc. #163] and with the Court of Appeals to stay the April 2004 Order pending appeal (both motions were denied). On November 26, 2004, the Claytons filed the currently pending Motion to Vacate the settlement agreement of September 23, 2003. On January 10, 2005 (after the April 2004 Order had been upheld on appeal) the Claytons filed the currently pending Motion for Relief from the April 2004 Order. On none of those occasions was there a suggestion that any of Judge Beaty's orders had been affected by bias.

In their Motion to Vacate, Plaintiffs ask generally that the Court vacate "orders entered in this matter by District Court Judge James Beaty" and then specifically ask for "an order vacating the settlement agreement approved by Judge Beaty on 23 September 2003."[4] (Pls.' Mot. Vacate Orders at 1, 3.) They assert that they are entitled to such relief under Federal Rule of Civil Procedure 60(b)(6). In their Motion for Relief, Plaintiffs ask for relief from operation of the Order entered by this Court on April 5, 2004 [Doc. #156] that granted Defendant's Motion to Enforce the Settlement Agreement and ordered the parties to comply with the terms of the settlement agreement as set out in the transcript of the proceedings of September 23, 2003. Plaintiffs' Motion for Relief relies on Rule 60(b)(2), (3), and (6).

Rule 60(b) states that a court may relieve a party from a final judgment, order, or proceeding for various reasons including under 60(b)(2) "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)," under 60(b)(3) "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party," or under 60(b)(6) "any other reason justifying relief from the operation of the judgment." To prevail

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[4] Although they ask for relief from all orders entered by Judge Beaty, Plaintiffs presumably are not seeking relief from Judge Beaty's recusal from this case on November 25, 2003: "It is the failure of Judge Beaty to voluntarily recuse prior to November 25, 2003, which forms the basis for this motion to vacate" (*Id.* at 4). The Plaintiffs' chief concern in the Motion to Vacate appears to be relief from the settlement agreement they entered into with Ameriquest on September 23, 2003, the terms of which they read into the record before Judge Beaty. In any event, because this motion will be denied, all Orders entered by Judge Beaty will stand.

in a motion seeking relief under 60(b), a movant must first show that he has met three "threshold conditions." *National Credit Union Admin. Bd. v. Gray,* 1 F.3d 262, 264 (4th Cir. 1993). He "must show [1] that his motion is timely, [2] that he has a meritorious defense to the action, and [3] that the opposing party would not be unfairly prejudiced by having the judgment set aside." *Park Corp. v. Lexington Ins. Co.,* 812 F.2d 894, 896 (4th Cir. 1987).

If all three threshold conditions are met, the analysis proceeds to a second stage in which the court must determine whether the movant has satisfied one or more of the six grounds for relief in 60(b)(1)-(6). *Werner v. Carbo,* 731 F.2d 204, 207 (1984). Once the movant has satisfied all the elements of the first and second stages of this analysis, the "court must balance the competing policies favoring the finality of judgments and justice being done in view of all the facts, to determine, within its discretion, whether relief is appropriate in each case." *Square Constr. Co. v. Washington Metro. Area Transit Auth.,* 657 F.2d 68, 71 (4th Cir. 1981).

A.

1.

Plaintiffs' Motion to Vacate the settlement agreement cannot be granted, because Plaintiffs have failed to meet the threshold condition of timeliness. Rule 60(b) requires that "[t]he motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgement, order, or proceeding was entered or taken." Fed. R. Civ. P. 60(b). Courts must determine what is a "reasonable time." The movant bears the burden to show timeliness and must offer a "satisfactory explanation" for

any delay. *Central Operating Co. v. Util. Workers of Am.*, 491 F.2d 245, 253 (4th Cir. 1974). The Fourth Circuit has upheld denials of 60(b) motions that were filed as little as two and one-half months after entry of the judgment or order from which relief was sought. *Consol. Masonry & Fireproofing, Inc. v. Wagman Constr. Corp.*, 383 F.2d 249, 251 (4th Cir. 1967); *see also McLawhorn v. John W. Daniel & Co.*, 924 F.2d 535, 538 (4th Cir. 1991) (three and one-half months); *Central Operating Co. v. Util. Workers of Am.*, 491 F.2d 245, 253 (4th Cir. 1974) ("almost four months"); *Jones v. Richmond,* 106 F.R.D. 485, 490 (E.D. Va. 1985) (discussing *Central Operating* and *Consolidated Masonry* and denying as untimely 60(b) motion filed "over three months" after movant received notice of grounds for the motion).

The Motion to Vacate was not filed within a reasonable time as required by Rule 60(b). The Claytons filed the Motion on November 26, 2004 – fourteen months after the settlement agreement was reached. Furthermore, the event which is the stated basis that Judge Beaty was biased against the Claytons, that is, the hearing in North Carolina Superior Court on July 11, 2002, occurred two years and four months before they filed this Motion to Vacate and fourteen months before they filed the motion for Judge Beaty to recuse himself.[5] The Claytons have not

[5] This case is therefore distinguishable from *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988). In that case, Health Services Acquisition Corporation (HSAC) filed a 60(b)(6) motion for relief from a judgment entered following a bench trial on the grounds that the presiding judge should have disqualified himself due to a conflict of interest. HSAC's 60(b)(6) motion was allowed even though it was filed approximately ten months after the judgment had been affirmed on appeal. In contrast to the instant case, however, *Liljeberg* was "not a case involving neglect or lack of due diligence by [movant]."

(Continued on following page)

offered a satisfactory – or indeed any – explanation for their decision to wait such a protracted period before raising the question and have, thus, failed to make the threshold showing that the motion was made "within a reasonable time." The Motion to Vacate Orders will be DENIED.

2.

Even if the Claytons had satisfied the threshold condition of timeliness, their Motion to Vacate would not be granted because they have not shown that this is a case meriting relief under Rule 60(b)(6). A motion under 60(6)(6) may be granted only upon the movant's showing "extraordinary circumstances." *Klapprott v: United States,* 335 U.S. 601, 613 (1949); *Reid v. Angelone,* 369 F.3d 363, 370 (4th Cir. 2004). The burden is on the Plaintiff to show that extraordinary circumstances exist, and "it should be no surprise that for a movant's case to succeed, the material offered in support of his Rule 60(b)(6) motion must be highly convincing." *Holland v. Virginia Lee Co., Inc.,* 188 F.R.D. 241, 252 (W.D. Va. 1999) (internal quotations omitted). The Plaintiffs simply rely on their own sweeping statements that there was some sort of bias against them, but offer no evidence in support of their assertion. They have not offered any showing, much less any highly convincing showing, in support of their claim of bias. They have not pointed out how any alleged bias would have affected their ability to enter freely into settlement with Ameriquest. Nor do they explain how Judge Rand's July

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486 U.S. at 864 n.11. HSAC had no way of learning of the conflict of interest any earlier than it did, and filed the motion promptly upon discovering the conflict. *Id.*

11, 2002, statement that he had been Judge Beaty's lawclerk could have shown that Judge Beaty was biased against the Claytons, especially in view of Judge Beaty's having granted their ex parte motion for a TRO on July 10, 2002. While the Claytons have suggested that Judge Beaty's recusal was an acknowledgement of bias, a reading of the transcript from the November 25, 2003 hearing [Doc. #150] shows otherwise. Judge Beaty could not understand, nor could the Claytons explain, how or why Judge Rand would have been biased against them. Judge Beaty disavowed any bias on his part, found there was no reasonable basis for the suggestion of bias, but then recused himself solely because of the Claytons' perception.

In denying a motion under 60(b)(6) challenging an order that enforced a settlement agreement, the Fourth Circuit observed, "strategic decisions made during the course of litigation provide no basis for relief under 60(b)(6), even though with hindsight they appear [to the movant to be] wrong." *Schwartz v. United States,* 976 F.2d 213, 218 (4th Cir. 1992). In deciding to enter into a settlement agreement, "[a] litigant weighs the chance of success against the probable cost of achieving that success through further litigation, all based on whatever limited information is available at the time." *Id.* As the Supreme Court has observed, "There must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." *Ackermann v. United States,* 340 U.S. 193, 198 (1950). This settlement agreement was entered into freely, and has already been scrutinized by the undersigned District Judge and by the Fourth Circuit. The Claytons have not shown that there are any extraordinary circumstances justifying its being vacated. The Motion to Vacate must accordingly be DENIED.

B.

Plaintiffs' Motion for Relief from the April 2004 Order enforcing the September 23, 2003, settlement agreement must also be denied. The Claytons have not satisfied the threshold condition of timeliness. Furthermore, even if all threshold conditions had been met, the Claytons' claims do not survive the second stage of the 60(b) analysis in that they do not make out grounds for relief under 60(b)(2),(3), or (6).

Although the Motion for Relief relies only on Rule 60(b)(2), (3) and (6) and presumably seeks relief from the April 2004 Order, the Claytons ask much more than that the Court vacate the April 2004 Order. They ask the Court to (1) find "that Ameriquest agreed to dismiss all their claims under 03-SP-125 under the agreement of 09/23/03" and "that Ameriquest failed to dismiss those claims creating an impasse in efforts with Plaintiffs to reduce the agreement to writing," (2) "[i]ssue an order that Ameriquest produce to the Plaintiffs and the Court copies of all documents, checks and other writings between Ameriquest and Trustee Barden Cooke in the matter 03-SP-125 and the property located at 1147 Burning Tree Drive, Chapel Hill, NC," (3) "[i]ssue an order that Ameriquest furnish Plaintiffs required tax forms from property receive in 2003," (4) find that "material facts were withheld from plaintiffs during the settlement conference" and that the resulting settlement is void, (5) vacate the Order of April 5, 2004, (6) "[i]ssue an order indicating that Barden Cooke was not a party or beneficiary of any agreement or order of this court in this instant action," and (7) impose "monetary sanctions for damages to the Plaintiffs in an amount sufficient to deter repetition of the fraud upon the Plaintiffs and the court." (Pls.' Br. Supp. Mot. for Relief at 9.)

The Claytons also "request relief from the order of April 5, 2004 (Doc. #156) based upon its vague and ambiguous order that all claims known or unknown be dismissed. . . ." (*Id.* at 8.) Finally, in their reply brief, the Plaintiffs ask that "the illegal 'settlement' [of September 23, 2003] be voided as contrary to law." (Pls.' Reply Br. Reply Br. to Def.'s Resp. [Doc. #194] at 7.)

1.

The Clayton's Motion for Relief does not meet the threshold condition of timeliness. Although the Claytons have purportedly filed this Motion asking for relief from the April 2004 Order, they are in fact requesting relief from the settlement agreement of September 23, 2003. None of the Claytons' claims of wrongdoing or "newly discovered evidence"[6] relate to the April 2004 Order. In fact, they all attempt to take issue with some aspect of the settlement agreement. This is borne out by their asking the Court to find that agreement void *(see, e.g.,* Pls.' Br. Supp. Mot. for Relief at 9; Pls.' Reply Br. to Def.'s Resp. [Doc. #194] at 3, 7) and by the fact that the Plaintiffs themselves refer to Ameriquest's "[p]ost 23 Sep 03 [a]ctions" (Doc. #194 at 2) and "[e]vents . . . [s]ince Sep 23, 2003" (Pls.' Br. Supp. Mot. for Relief at 2) in making their arguments. The Motion for Relief was filed on January 10, 2005, within one year after the April 2004 Order, but more than two years after the agreement it seeks to void. As

[6] As discussed more fully in part II.B.2., *infra*, the supposedly "newly discovered evidence" was actually available to the Claytons at the time of settlement; their claims that the information was only recently available are without merit and therefore have no bearing on the timeliness consideration.

with the Motion to Vacate, the Claytons have not offered a satisfactory explanation for the lengthy delay. The Motion for Relief must be DENIED as untimely.

2.

Even if the Motion for Relief had been timely filed, the Claytons have not shown that they are entitled to relief under 60(b)(2), (3), or (6). In order to obtain relief under 60(b)(3) a moving party must "prove misconduct by clear and convincing evidence" and establish that "the misconduct prevented the moving party from fully presenting its case." *Schultz v. Butcher,* 24 F.3d 626, 630 (4th Cir. 1994). In order to support a motion under 60(b)(2), a party must demonstrate:

> (1) the evidence is newly discovered since the judgment was entered; (2) due diligence on the part of the movant to discover the new evidence has been exercised; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that is likely to produce a new outcome if the case were retried, or is such that would require the judgment to be amended.

Boryan v. United States, 884 F.2d 767, 771 (citation omitted). The movant must show "not only that this evidence was newly discovered or unknown to it until after the hearing, but also that it could not with reasonable diligence have discovered and produced such evidence at the hearing." *Id.* (quotation and citation omitted). Thus, evidence that was available to the movant prior to the entry of judgment "as a matter of law" cannot be grounds for granting a 60(b)(2) motion. *Id.* "The 'newly discovered evidence' provision of Rule 60(b)(2) is aimed at correcting

an erroneous judgment stemming from the unobtainability of evidence. Consequently, a party seeking a new trial under Rule 60(b)(2) must show that the missing evidence was 'of such a material and controlling nature as [would] probably [have] changed the outcome.'" *Schultz,* 24 F.3d at 631 (alteration in original; internal citation omitted). As already noted, a motion under 60(b)(6) may only be granted upon the movant's showing "extraordinary circumstances," *Klapprott v. United States,* 335 U.S. 601, 613 (1949); *Reid v. Angelone,* 369 F.3d 363, 370 (4th Cir. 2004).

The Claytons do not separate their arguments among 60(b)(2), (3), and (6), and therefore the contentions are addressed jointly here. The Claytons have failed to show that any newly discovered evidence, fraud or misconduct, or extraordinary circumstances are present in this case. The allegedly newly discovered evidence, which also forms the basis for the Claytons' allegation of fraud, relates to Ameriquest's credit bid at the foreclosure sale on September 5, 2003. This information was available to the Plaintiffs, and certainly could have been uncovered with the exercise of reasonable diligence on their part. *(See, e.g.,* Def.'s Resp. to Pls.' Mot. for Relief [Doc. #193] at 8 and Exs. C, D, F.) The Claytons' allegation that Ameriquest somehow violated the settlement agreement and/or defrauded them by not providing them with the proper tax forms similarly does not support 60(b) relief. The April 2004 Order does not even address the question of tax forms, so it is unclear how this allegation has any bearing on the Motion for Relief from that Order; nor were the tax forms at issue (Forms 1098 and 1099-A) mentioned in the settlement agreement. Even if the failure to provide tax forms did constitute a violation of the settlement agreement, which it does not, it would not form the basis for

relief under 60(b)(2), (3), or (6). Most importantly, however, the Claytons' allegations fall far short of showing that Ameriquest engaged in misconduct that "prevented the moving party from fully presenting its case." *Schultz,* 24 F.3d at 631.[7] The Claytons have not shown that there are grounds for relief under 60(b)(2),(3), or (6), and the Motion for Relief must be DENIED.

III.

The Claytons have also filed a Motion for a Change of Venue [Doc. #176] pursuant to 28 U.S.C. § 1404(a), which states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a) (2005). The Plaintiffs again argue in support of this Motion that the Court in the Middle District of North Carolina are biased against them but have offered no showing of extrajudicial bias to support that argument. They have not shown that the Middle District of North Carolina is an inconvenient venue for the parties, or that the Eastern District of Virginia, the forum in which they now wish to be heard, is a proper or more convenient venue. This Motion for Change of Venue is completely without merit and will be DENIED.

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[7] In the event the Claytons had further concerns about the tax forms, Ameriquest has offered to furnish the appropriate forms to them. (Def.'s Supplemental Resp. to Motion for Relief [Doc. #197] at 5.)

IV.

A hearing is being scheduled to consider Ameriquest's motions for a finding of civil contempt and for entry of a prefiling injunction.

V.

For the reasons set forth above, the following will be ordered:

1. Plaintiffs' Motion for a Change of Venue [Doc. #176] will be DENIED.

2. Plaintiffs' Motion to Vacate Orders [Doc. #183] ("Motion to Vacate") will be DENIED.

3. Plaintiffs' Motion for Relief from Order of This Court [Doc, #187] ("Motion for Relief") will be DENIED.

4. Plaintiffs' Motion for Stay on Motion for New Judgment [Doc, #189] ("Motion for Stay") is rendered MOOT.

This the day of August 24, 2005

/s/ N. Carlton Tilley, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HAYWOOD M. CLAYTON and SYLVIA CLAYTON, Plaintiffs,	)	
v.	)	
AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; and MORRIS, SCHNEIDER & PRIOR, LLC, Defendants.	)	1:02CV00415

ORDER

(Filed 08/24/2005)

This case arises between Plaintiffs Haywood and Sylvia Clayton ("the Claytons") and Defendant Ameriquest Mortgage Company[1] ("Ameriquest"). For the reasons set forth in a contemporaneously filed Memorandum Opinion, it is ordered that:

1. Plaintiffs' Motion for a Change of Venue [Doc. #176] is DENIED.

2. Plaintiffs' Motion to Vacate Orders [Doc. #183] ("Motion to Vacate") is DENIED.

3. Plaintiffs' Motion for Relief from Order of This Court [Doc. #187] ("Motion for Relief") is DENIED.

[1] Ameriquest Mortgage Company ("Ameriquest") is the only remaining defendant.

4. Plaintiffs' Motion for Stay on Motion for New Judgment [Doc. #189] ("Motion for Stay") is rendered MOOT.

5. A hearing to address defendant's motion to show cause why plaintiffs should not be held in civil contempt [doc. #171] ("motion to show cause") and defendant's motion for a pre-filing injunction against plaintiffs [doc. #174] has been noticed.

This the day of August 24, 2005

/s/ N. Carlton Tilley, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HAYWOOD M. CLAYTON and SYLVIA CLAYTON, Plaintiffs, v. AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; and MORRIS, SCHNEIDER & PRIOR, LLC, Defendants.	)	1:02CV00415

MEMORANDUM ORDER

(Filed 10/26/2005)

TILLEY, Chief Judge

This case arises between Plaintiffs Haywood and Sylvia Clayton ("the Claytons") and Defendant Ameriquest Mortgage Company[1] ("Ameriquest") and is currently before the Court on Defendant's Motion for a Pre-Filing Injunction Against Plaintiffs [Doc. # 1741 ("Motion for Pre-Filing Injunction").

For the reasons set forth below, it shall be ordered that Plaintiffs' Motion for a Pre-Filing Injunction be GRANTED.

[1] Ameriquest Mortgage Company ("Ameriquest") is the only remaining defendant.

I.

This case relates to a promissory note executed by the Claytons and a deed of trust on their Chapel Hill, N.C. residence which secured the note held by Defendant Ameriquest. Seeking to forestall foreclosure and to obtain other relief, the Claytons filed suit in both this Court (1:02CV00415 was filed on May 28, 2002) ("415" or "the 415 case") and in state court. When Ameriquest noticed foreclosure, Mr. Clayton removed the state foreclosure action to this Court (1:02CV00453) ("453") on June 10, 2002. Both cases (415 and 453) were assigned to United States District Judge James A. Beaty, Jr., who, finding a lack of federal jurisdiction, remanded the 453 forfeiture case to the Orange County Superior Court on July 5, 2002. On July 8, 2002, the Claytons filed a motion in the 415 case [Docs. #8, 9] seeking a temporary restraining order ("TRO") preventing the foreclosure which had been set for July 11, 2002, in Orange County, North Carolina. The motion was submitted to Judge Beaty on July 9th and he entered an order [Doc. # 10] on July 10, 2002, granting the TRO, contingent upon the posting of a $5,000 bond. Notice of the order was given telephonically by the office of the Clerk of this Court to the Claytons on July 10th and the written order was faxed to the Claytons and to the Clerk of Court of Orange County on July 11th. Rather than post the bond with this Court, Mr. Clayton appeared in the Superior Court of Orange County on July 11th seeking an order restraining the foreclosure.[2] When Judge Rand, the

[2] According to Mr. Clayton, Judge Rand, the state judge, offered to recuse himself, stating that he had formerly been a lawclerk for Judge Beaty. From that statement, Mr. Clayton infers that there must have been some bias against him on the part of both Judge Rand and Judge Beaty. (Doc. # 150; Trans. of Nov. 25, 2003 Hearing.)

state judge, did not grant a state TRO, Mr. Clayton – on that same day, July 11, 2002 – filed a bankruptcy petition, triggering the automatic stay provision and, thereby, halting the scheduled foreclosure sale. The Claytons' appeal of the Bankruptcy Judge's dismissal of that petition with sanctions was docketed in this Court as 1:03CV0083 and assigned to Judge Beaty.

This case, the 415 case, proceeded on a tortuous track with a number of motions and responses being filed by both parties.[3] After discovery was completed, the case was set for an October 6, 2003 trial. Notice was given to the parties on August 25, 2003 that a settlement conference would be held in Greensboro at 10 A.M. on September 23rd. On September 22nd, the Claytons moved for a change of venue and/or the recusal of Judge Beaty [Doc. #134] based on the ground – stated on September 22, 2003 for the first time – that Judge Rand's statement on July 11, 2002 indicated some bias held by him and Judge Beaty.

During the settlement conference on September 23rd, the Claytons entered into a settlement agreement with Ameriquest, the terms of which were read into the record before Judge Beaty. The Claytons failed to comply with the terms of that agreement, however, and on October 6, 2003, Ameriquest filed a Motion to Enforce Settlement Agreement [Doc. #141]. On November 25, 2003, during a hearing on that and other motions, including a motion for recusal [Doc. # 149], Judge Beaty recused himself, stating that while "there's no reasonable basis for it, just the

[3] A review of the 415 case docket sheet reveals that between July 11, 2002 and September 22, 2003 alone, the Claytons filed sixteen motions, nine briefs, four notices, eight responses, and five objections.

perception that Mr. Clayton has raised [is] sufficient for this Court to recuse itself in this matter." [Doc. # 150, Trans. p. 65].

Following Judge Beaty's recusal, the undersigned held a hearing on December 12, 2003, to address Ameriquest's Motion to Enforce the Settlement Agreement. On April 5, 2004, the Court issued a Memorandum Opinion [Doc. #155] and Order [Doc. #156] granting Ameriquest's motion. The parties were ordered to take the following actions to effectuate the terms of the settlement agreement:

> (1) withdraw any and all motions for sanctions;
>
> (2) withdraw any and all motions for attorneys' fees;
>
> (3) withdraw any and all motions to vacate or amend orders;
>
> (4) file voluntary dismissals of any and all appeals filed in this dispute;
>
> (5) file notices of satisfaction of judgment as to any outstanding judgments;
>
> (6) file notices of waiver of any attorneys' fees that have already been awarded; and
>
> (7) file voluntary dismissals with prejudice as to all claims.

(April 5, 2004 Order, at 1 [Doc. #156].)

On April 15, 2004, the Claytons filed a motion [Doc. #158] requesting reconsideration and/or an amendment of the April 5 Order. The motion for reconsideration was denied in a Memorandum Order issued on June 18, 2004 [Doc. #162]. The Claytons appealed both the April 5 Order

and the June 18 Order [Doc. #165].[4] The Court of Appeals for the Fourth Circuit affirmed the Orders on December 29, 2004 [Doc. #186].[5]

In addition to the 415 Case, the Claytons have filed numerous other actions in various courts relating to the foreclosure of their home by Ameriquest.[6] Since 2000 the Claytons have filed five bankruptcy cases,[7] each apparently in an attempt to stay the foreclosure of their home.[8] Additionally the Claytons have initiated three separate civil actions, and one bankruptcy adversary proceeding against Ameriquest. (Def.'s Brief in Support of Motion for Pre-Filing Injunction ¶ 2.) Each of these were attempts to stall the foreclosure of the Clayton's home and all have been unsuccessful. Finally, following the April 5, 2004

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[4] The Claytons also filed a Motion for Stay Pending Appeal [Doc. #163] asking that the April 5 Order be stayed while they appealed it and the June 18 Order. The Motion for Stay was denied in a Memorandum Order issued August 17, 2004 [Doc. #169].

[5] The Claytons also filed a Motion for Change of Venue and Motion to Vacate in November 2004 and Motion for Relief and Motion for Stay in January 2005. All of these motions were either denied or rendered moot in a August 24, 2005 Memorandum Opinion and Order of this Court.

[6] Ameriquest attached a chart to their Motion for Pre-Filing Injunction summarizing the Claytons' cases, filings and their outcomes. The Court takes judicial notice of this chart and the information provided within it. *See, e.g., Freshman v. Atkins*, 269 U.S. 121, 124 (1925) (a court may take judicial notice of its own records in different, but interrelated, proceedings).

[7] Case Nos. 00-81622, 01-81356, 01-83187, 02-82063, 03-82095.

[8] Sanctions have been imposed against the Claytons for their improper bankruptcy filings, the most recent being an order from the Bankruptcy Court dismissing the case with prejudice, finding abuse of the bankruptcy system and barring Mr. Clayton from re-filing any petition for two years. (Case No. 02-82063, [Doc. # 15]).

Order Enforcing Settlement Agreement which ordered the parties to dismiss all claims arising out of the incident, on September 7, 2004, the Claytons filed another suit in state court against Ameriquest and the substitute trustee.[9] Again, the events that form the basis for this most recent suit are the same as those in the previous cases.

In October 2004 Ameriquest filed a Motion to Show Cause and Motion for Pre-Filing injunction in the 415 case. A hearing was held on September 6, 2005, to address Defendant's Motions. The Court will now consider Defendants' Motion for a Pre-Filing Injunction against Plaintiffs.

II.

The All Writs Act, 28 U.S.C. § 1651 (a), authorizes district courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The Act authorizes district courts to "restrict access to federal courts of parties who repeatedly file frivolous litigation." *Armstrong v. Koury Corp.*, 16 F. Supp. 2d 616, 620 (M.D.N.C. 1998); *see also In re Burnley*, 988 F.2d 1 (4th Cir. 1992) (recognizing the district court's ability to impose reasonable limits upon those who abuse the judicial system). The entry of a pre-filing injunction is appropriate when a plaintiff's lawsuits are (1) "duplicative and vexatious," (2) such that "he cannot have a reasonable expectation of prevailing;" and (3) have "caused needless expense and burdens to other parties and the court. . . ." *Tinsley v. Moore Business Forms, Inc.*, No. 93-2086, 1994 WL 249239, at *1 (4th Cir.

[9] Case No. 04 CVS 1706

June 9, 1994) (adopting factors enunciated in *Safir v. United States Lines, Inc*, 792 F.2d 19, 24 (2d Cir. 1986), *cert denied*, 479 U.S. 1099 (1987)). There are no exceptions for *pro se* litigants. *Armstrong*, 16 F. Supp. 2d at 620. Finally, although the court is given substantial discretion in crafting appropriate sanctions, a pre-filing injunction should be "'carefully tailored' to address the specific circumstances presented." *Tinsley*, 1994 WL 249239, at * 1.

III.

In this instance, the Claytons have filed a total of *five* lawsuits against Ameriquest and instituted *five* separate bankruptcy claims in an effort to stall and prevent foreclosure on their home. These lawsuits all relate to the same series of events surrounding the foreclosure of the Claytons' home. None of these claims have been successful.[10] The Claytons' conduct rises to the level of litigation abuse that warrants a pre-filing injunction. *See Williams v. PPG Industries, Inc.*, No. 101 CV00459, 2003 WL 21223835, at * 2 (M.D.N.C. May 22, 2003) (enjoining plaintiffs for filing a fifth lawsuit against employer); *Armstrong*, 16 F. Supp. 2d at 620 (enjoining plaintiff for filing six repetitive and frivolous lawsuits against the same defendant); *Odinkemelu v. Williams*, No. 1:00CV00750, 2001 WL 34013620, at *9 (M.D.N.C. April 3, 2001) (enjoining plaintiff after third attempt to bring claims that are entirely without legal merit against same defendant); *c.f. Tinsley*, 1994 WL 249239, at * 1-2 (agreeing that a pre-filing injunction of some sort was warranted when plaintiff had been advised

[10] The actions have been dismissed voluntarily by the Claytons or have been dismissed by the judge presiding over that case.

by several courts that he failed to state a cause of action). Additionally, after being ordered on April 5, 2004 to dismiss all claims against Ameriquest pursuant to the settlement agreement, the Claytons filed another action in state court on September 7, 2004. Despite their argument to the contrary, it is clear from the Complaint in that case that the events giving rise to this new action are identical to those in all of their previous lawsuits. (*See* Def.'s Mtn for Pre-Filing Inj, Ex. A.) The Claytons insist on continuing to file suits against Ameriquest and its agents regardless of the lack of basis for their claims.

In addition to the number of lawsuits filed by the Claytons to which Ameriquest has been forced to respond, the Claytons have also filed countless motions in this and other cases. For example, the Claytons have improperly attempted to remove a state court action on two separate occasions, have filed four petitions for writ of supersedeas and/or motions for stay, filed at least six motions for injunctive relief, at least four motions for sanctions, and taken several appeals to the Court of Appeals for the Fourth Circuit.[11] Because of the Claytons' repeated motions, both Ameriquest and the judiciary, have expended a great amount of resources. None of these motions or appeals have been successful. Such litigation tactics further support a pre-filing injunction. *See Williams*, 2003 WL 21223835, at * 3 (criticizing use of litigation tactics that result in unnecessary burden and expense to opposing party and the court). Because the Claytons have abused

[11] These examples are limited to those filings against Ameriquest, the Claytons have also filed numerous cases and motions against their prior mortgagees. (*See, e.g.*, Def.'s Mtn for Pre-Filing Inj, Ex. A.)

the judicial system through repetitive, frivolous lawsuits and motions, a pre-filing injunction is warranted.

III.

Because pre-filing injunctions limit access to the court, their terms must be "narrowly tailored" to address the specific circumstances presented. *Id.* ("An absolute bar to filing actions would be 'patently unconstitutional.'") (citations omitted). The Claytons have engaged in repeated litigation against Ameriquest based on essentially the same claims and allegations. Thus a pre-filing injunction that restricts and ends the abusive litigation against Ameriquest, but does not shut off the Claytons' access to the courts is necessary to comply with the Fourth Circuit's holding in *Tinsley*. 1994 WL 249239, at * 1-2 (overturning pre-filing injunction as overly broad because it prohibited the filing of all civil actions without permission of the court). This pre-filing injunction will therefore be limited to cases against Ameriquest and its affiliates. *See, e.g.*, *Armstrong*, 16 F. Supp. 2d at 622 (plaintiff prohibited from filing any additional suits against defendant without permission of court); *Williams*, 2003 WL 21223835, at * 3 (granting request for pre-filing injunction prohibiting plaintiff from filing any more claims or papers in an employment related matter against defendant); *Farguson v. MBank Houston, N.A.*, 808 F.2d 358, 360 (5th Cir. 1986) (enjoining plaintiff from filing suit "only to the same claims against the same defendants" without leave of the court). Requiring the Claytons to obtain leave before filing any action in federal court, against Ameriquest, or any agent, employee, or assignee of Ameriquest, that is related to the foreclosure of their home is reasonable in light of their extensive and abusive litigation history.

It is also within the authority of this court to enjoin the Claytons' from filing additional claims against Ameriquest in other courts, including state court. In *Armstrong*, the court found that "[g]iven Plaintiff's propensity to prance between the state and federal systems," it was also necessary for the Court to enjoin Plaintiff from pursuing the defendant further in the state court system. 16 F. Supp. 2d at 621; *see also In re Martin-Trigona*, 737 F.2d 1254, 1261 (2d Cir. 1984) (defendants subjected to vexatious litigation in the federal courts are also entitled to protection in state courts). Given that they have filed numerous actions in this Court, the bankruptcy court, and several different state courts, the Claytons appear to have the same propensity. Thus, the Claytons will also be enjoined from filing any related action in any state court against Ameriquest, or any agent, employee, or assignee of Ameriquest, without first obtaining leave of this Court.

IV.

In summary, the Claytons, or anyone acting on their behalf, are hereby enjoined from filing any action without prior leave of this Court that:

> (1) involves Ameriquest and/or its parent and subsidiary companies, predecessors, successors, assigns, officers, directors, affiliates, agents, employees, and present and former attorneys; **and**
>
> (2) arises out of or is related in any way to the events surrounding the promissory note and deed of trust that was held by Ameriquest on Plaintiffs' former residence or the subsequent legal proceedings (including, without limitation, in this Court, the Court of Appeals for the Fourth Circuit, the United States Bankruptcy Court, the

North Carolina Superior Court (Orange County), the North Carolina Court of Appeals, and the Supreme Court of North Carolina).

Leave of court will be forthcoming upon the Claytons' demonstrating through a properly filed motion that the proposed filing: (1) can survive a challenge under *Rule 12 of the Federal Rules of Civil Procedure*; (2) is not barred by principles of issue or claim preclusion; (3) is not repetitive or violative of a court order; and (4) is in compliance with *Rule 11 of the Federal Rules of Civil Procedure*. This order and injunction will not apply to the filing of timely notices of appeal from this court to the Court of Appeals if the papers are solely in furtherance of such appeals for this case (1:02CV00415).

This the day of October 26, 2005

/s/ N. Carlton Tilley, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON, Plaintiffs, v. AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MARTIN; and MORRIS SCHNEIDER & PRIOR, LLC, Defendants.	)	1:02CV415

MEMORANDUM OPINION

(Filed Apr. 5, 2004)

TILLEY, Chief Judge

This matter is before the Court on Defendant Ameriquest Mortgage Company's Motion to Enforce the Settlement Agreement [Doc. #141]. For the reasons stated below, Ameriquest's Motion will be GRANTED.

I.

The facts and procedural history relevant to the pending matters are as follows. On May 28, 2002, Plaintiffs Haywood and Sylvia Clayton brought suit against Defendants[1] in the Middle District of North Carolina. On

[1] Of the three initial Defendants, only Ameriquest still remains in the case and is involved in the dispute at hand. Dismissal with prejudice was entered as to Defendants Lawrence S. Martin and Morris Schneider & Prior, LLC on October 28, 2003 [Doc. #147].

August 5, 2003, after numerous preliminary motions and discovery issues had been addressed, the matter was set for trial. On September 23, 2003, the Claytons and Ameriquest participated in a pre-trial settlement conference with United States District Judge James A. Beaty, Jr. The parties stated they had reached a settlement agreement and announced the terms of that agreement in open court. The terms were approved and entered on the record. Relevant portions of the transcript [Doc. #149] are as follows.

> MR. GAFFREAU:[2] I'm pleased to report we have reached a settlement agreement with the Plaintiffs in this matter and a number of other matters; and if I may, Your Honor, I'd like to go over the terms. . . .
>
> [T]he parties are agreeing to mutual releases of all claims known or unknown wherever they may have been stated or are stated from the beginning of time until the present. . . .
>
> The parties would agree to dismissals with prejudice to all claims that are pending against one another in this action, in the actions that are pending in state court, in bankruptcy court, at the Fourth Circuit, and other actions in the Middle District of North Carolina . . . .
>
> THE COURT: That includes any motions for sanctions or motions for attorney's fees that may be outstanding; is that correct?

[2] Mr. Stuart C. Gauffreau is counsel for Ameriquest.

MR. GAFFREAU: Yes, Your Honor, and any orders or judgments that have already been issued granting relief to Ameriquest or to the Claytons in that regard. Those would be waived by both [parties]. . . .

[T]he parties are agreeing to convey title to . . . a piece of property that is adjacent to the house and the lot that are the subject of this action and that have been foreclosed upon; and they've represented that the lot is free of liens, judgments, and any other encumbrances . . .

[T]he Plaintiffs have agreed to indemnify Ameriquest for any expenses they may incur . . . if it turns out that any of those representations turn out not to be true. . . .

They've also represented there are no taxes due and owing with regard to that property. . . .

There's no admission of liability on the part of Ameriquest or on the part of the Plaintiffs. . . .

THE COURT: The parties are aware . . . that you're indicating as a part of this settlement any claims that are pending in state court will be disposed of and you'll be asking the court to accept the consent judgment reached in this case as evidence of the binding effect of the agreement . . . in state court. Is that correct?

MR. GAUFFREAU: That's correct, Your Honor.

MR. CLAYTON: That's correct, Your Honor.

THE COURT: Mr. Clayton, Mrs. Clayton, Mr. Gauffreau has laid out the terms of the settlement agreement. . . . Are you recommending to the Court that the Court accept this as the

> consent judgment in this case resolving all matters in this court and any other courts of other jurisdictions?
>
> MR. CLAYTON: Yes, Your Honor.
>
> MRS. CLAYTON: Yes, Your Honor.
>
> THE COURT: You understand that by making that acknowledgment today the Court will sign off on the consent judgment once it's reached . . . and this today is the final resolution of the matter. The only thing awaiting is the Court's signature on the document that will be filed; but as far as the Court is concerned, this matter will be fully completed based upon the representations that have been made.
>
> MR. CLAYTON: Happily so, Your Honor.
>
> MRS. CLAYTON: Yes, sir.

(Tr. Settlement Conf. at 2-6.)[3]

In the week following the settlement conference, the parties were unable to agree on a written settlement agreement and consent judgment that accurately reflected the terms of the agreement as previously set forth on the record. On October 6, 2003, Plaintiffs filed a Motion to Transfer Pendant State Claims to State Court, and a "Notice of Voluntary Dismissal of all Federal Claims as it Relates to Defendant Ameriquest Mortgage Co." [Doc. #139]. In response, Ameriquest filed a Motion to Enforce the Settlement Agreement. [Doc. #141].

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[3] The transcript also lays out the terms upon which the Claytons were to vacate the foreclosed upon property. (*Id.* at 6.) As the Claytons have already vacated the property in question, these details are no longer relevant.

These motions were set for hearing on November 25, 2003. At this hearing, upon motion of the Plaintiffs, Judge Beaty recused himself and stated that the pending motions would be heard by another district judge.[4] The matter was referred to this Court and set for hearing on December 12, 2003. Ameriquest and Mr. Clayton were present at this hearing; Mrs. Clayton was absent. At the hearing, the parties were given further opportunity to continue settlement discussions. However, on December 29, 2003, Plaintiffs filed a Memorandum to the Court reporting the failure of the parties to agree and requesting further oral argument. [Doc. #152]. Ameriquest filed a response brief, again requesting that this Court enforce the September 23, 2003 settlement agreement.

II.

It is determined that further oral argument will not aid the decisional process. For the reasons discussed below, Ameriquest's Motion to Enforce the Settlement Agreement will be GRANTED. As a matter of policy, settlement benefits parties and conserves judicial resources, and is therefore favored by the Fourth Circuit. *U.S. ex rel. McDermitt, Inc. v. Centex-Simpson Const.*, 34 F. Supp. 2d 397, 399 (N.D. W. Va. 1999). When a settlement is reached in a case pending before it, a trial court has the authority to enforce the terms of that settlement. The Fourth Circuit has stated that "[t]rial courts possess the inherent authority to enforce a settlement agreement and to enter judgment based on an agreement without a plenary hearing." *Petty v. Timken Corp.*, 849 F.2d 130, 132

[4] The details of the recusal are irrelevant to the issues at hand.

(4th Cir. 1988) (enforcing settlement agreement that was reached at a pre-trial conference, approved by the judge, and entered on the record).

A settlement agreement is a contract, and therefore exists once offer, acceptance, and consideration are exchanged between the parties, regardless of whether the agreement is oral or written. *McDermitt,* 34 F. Supp. 2d at 399. As such, the authority of a trial court to enforce a settlement agreement exists regardless of whether the settlement agreement has been reduced to writing. *Id.* Specifically, a settlement agreement whose terms are announced in open court and made part of the record, but is not otherwise reduced to writing is a valid contract enforceable by the court. *Id.* A motion to enforce a settlement agreement, in essence, is an action for specific enforcement of a contract. *Id.*

A review of the transcript of the September 23, 2003 hearing shows that the parties unequivocally agreed on the record that settlement had been reached. The terms of the settlement were clearly laid out and agreed to by each party. The fact that the terms were not discussed in great specificity did not bar the formation of a contract. As long as the terms enable the Court "to ascertain what the parties have agreed to do," the contract is enforceable. *Id.* at 400. Here, it is clear the parties agreed to release all claims and withdraw all motions, in any court, regarding this dispute.

Plaintiffs' arguments primarily focus on the terms of the draft settlement agreements and consent judgments that Ameriquest presented to them after the agreement was made on September 23, 2003. However, the contract was complete at the point when each party had agreed to

the terms as stated for the record on September 23, 2003. Therefore, this Court has the authority to enforce the terms of that oral agreement without reference to any later attempted efforts at reducing the agreement to writing.

III.

In summary, Ameriquest's Motion to Enforce the Settlement Agreement will be GRANTED. Accordingly, the parties will be ordered to take the following actions with respect to this dispute, both in this Court and others: (1) withdraw any and all motions for sanctions; (2) withdraw any and all motions for attorneys' fees; (3) withdraw any and all motions to vacate or amend orders; (4) file voluntary dismissals of any and all appeals filed in this dispute; (5) file notices of satisfaction of judgment as to any outstanding judgments; (6) file notices of waiver of any attorneys' fees that have already been awarded; and (7) file voluntary dismissals with prejudice as to all claims.[5] Further, Plaintiffs will be ordered to execute a warranty deed to Ameriquest, in accordance with the representations made as part of the settlement agreement.[6]

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[5] Plaintiffs' October 6, 2003 unilateral attempt to voluntarily dismiss its federal claims against Defendants [Doc. #139] was improper. All claims must be dismissed with prejudice.

[6] The Claytons agreed to convey title to the property in question. In addition, they agreed that, as of the date of the agreement, the lot was free of any encumbrances and that no taxes were due. Finally, they agreed to indemnify Ameriquest if these representations turned out to be false. (Tr. Settlement Conf. at 3-4.)

In addition, this Court's decision to grant the Motion to Enforce the Settlement Agreement renders the following pending motions MOOT: (1) Ameriquest's Motion for Summary Judgment [Doc. #85]; (2) Plaintiffs' Motion for Joinder of Claims and Remedies [Doc. #112]; and (3) Plaintiffs' Motion to Transfer Pendant State Claims to State Court [Doc. #139].

This 5th day of April, 2004

/s/ N. Carlton Tilley, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON,	)	
Plaintiffs,	)	
v.	)	
AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MARTIN; and MORRIS SCHNEIDER & PRIOR, LLC,	)	1:02CV415
Defendants.	)	

ORDER

(Filed Apr. 5, 2004)

For the reasons stated in a contemporaneously filed Memorandum Opinion, Defendant Ameriquest Mortgage Company's Motion to Enforce the Settlement Agreement [Doc. #141] is GRANTED. Specifically, IT IS ORDERED that the parties take the following actions, both in this Court and others, to effectuate the terms of the September 23, 2003 agreement:

(1) withdraw any and all motions for sanctions;

(2) withdraw any and all motions for attorneys' fees;

(3) withdraw any and all motions to vacate or amend orders;

(4) file voluntary dismissals of any and all appeals filed in this dispute;

(5) file notices of satisfaction of judgment as to any outstanding judgments;

(6) file notices of waiver of any attorneys' fees that have already been awarded; and

(7) file voluntary dismissals with prejudice as to all claims.

Further, IT IS ORDERED that Plaintiffs execute a warranty deed to Ameriquest, in accordance with the representations made as part of the settlement agreement.

This Court's decision to grant the Motion to Enforce the Settlement Agreement renders the following pending motions MOOT: (1) Ameriquest's Motion for Summary Judgment [Doc. #85]; (2) Plaintiffs' Motion for Joinder of Claims and Remedies [Doc. #112]; and (3) Plaintiffs' Motion to Transfer Pendant State Claims to State Court [Doc. #139].

This 5th day of April, 2004

/s/ N. Carlton Tilley, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON, Plaintiffs, v. AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MARTIN; and MORRIS SCHNEIDER & PRIOR, LLC, Defendants.	)	1:02CV415

MEMORANDUM ORDER

(Filed Jun. 18, 2004)

On April 5, 2004, this Court granted Defendant Ameriquest Mortgage Company's Motion to Enforce the Settlement Agreement previously reached by the parties. [Doc. #156]. Both parties were ordered to take specified actions in accordance with the terms of the Settlement Agreement. On April 15, 2004, Plaintiffs Haywood and Sylvia Clayton filed a Motion for Reconsideration of the April 5, 2004 Order [Doc. #158]. This Motion also requested that the Order be amended with a more definite statement.

Plaintiffs have not cited any authority which would support reconsideration or amendment of the April 5 Order; however, one of Plaintiffs' substantive arguments will be addressed briefly. Plaintiffs contend that the original settlement agreement, the terms of which were announced in open court on September 23, 2003, is invalid. Specifically, they contend that the portion of the

agreement stating that Plaintiffs agree to convey title to a piece of property to Defendants violates North Carolina's Statute of Frauds, found in N.C. Gen. Stat. § 22-2. In essence, § 22-2 provides that a contract to sell or convey real estate must be in writing. Otherwise, the contract is void. Plaintiffs contend that the settlement agreement at issue is not a valid contract because it involved conveyance of real property and was made orally in open court and never reduced to writing.

North Carolina law establishes that the purpose of the Statute of Frauds is to avoid fraud. *House v. Stokes,* 66 N.C. App. 636, 641, 311 S.E.2d 671, 675 (1984). In accordance with this purpose, the provision has not been construed literally, and the word "void" should actually be interpreted as "voidable." *Herring v. Volume Merch., Inc.,* 249 N.C. 221, 224, 106 S.E.2d 197, 200 (1958).

It does not appear that North Carolina courts have addressed directly the issue of whether the Statute of Frauds applies to oral settlement agreements. However, to interpret the Statute of Frauds to apply to a settlement agreement, the terms of which are announced in open court and entered upon the record, would be inconsistent with the Statute's purpose of avoiding fraud. There is no reasonable concern of fraud when an agreement is discussed in open court in the presence of both parties. Cases in other jurisdictions support this view and have found that the Statute of Frauds does not apply to settlement agreements accepted by a court. *See, e.g., Byblos Corp. v. Salem Farm Realty Trust,* 141 N.H. 726, 731, 692 A.2d 514, 517 (1997) (stating that "settlements that involve land conveyances are excepted from the statute when they are finalized under court supervision"); *Szymkowsi v. Szymkowsi,* 104 Ill. App. 3d 630, 634, 432 N.E.2d 1209,

1212 (1982) (stating that "[t]he safeguards of the Statute of Frauds are fully met when a settlement agreement is reached in open court in the presence of the parties"); *Owens v. Lombardi*, 41 A.D.2d 438, 440, 343 N.Y.S.2d 978, 981 (1973) (stating that "a settlement agreement will not be impaired because of any restriction of the Statute of Frauds").

In short, North Carolina's Statute of Fraud provision does not apply to the settlement agreement at issue. Therefore, even had Plaintiffs provided grounds for this Court to reconsider its April 5, 2004 Order, Plaintiffs' substantive argument regarding the Statute of Frauds is without merit. In addition, Plaintiffs' other substantive grounds are without merit and need not be discussed.

Plaintiffs' Motion to Reconsider [Doc. #158] is DENIED. Plaintiffs' request to amend the Order with a more definite statement is also DENIED, as the terms of the Order are clear. Therefore, IT IS ORDERED that Plaintiffs comply with the terms of this Court's April 5, 2004 Order.

This 18th day of June, 2004

/s/ N. Carlton Tilley, Jr.
United States District Judge

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1849

HAYWOOD M. CLAYTON; SYLVIA K. CLAYTON,

Plaintiffs-Appellants,

versus

AMERIQUEST MORTGAGE COMPANY,

Defendant-Appellee,

and

LAWRENCE S. MAITIN; MORRIS, SCHNEIDER & PRIOR, LLC,

Defendants.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., Chief District Judge. (CA-02-415-1)

Submitted: November 10, 2004 Decided: December 29, 2004

Before WILKINSON, NIEMEYER, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Haywood M. Clayton, Sylvia K. Clayton, Appellants Pro Se. Dena Beth Langley, Stuart Carlen Gauffreau, NEXSEN PRUET ADAMS KLEEMEIER, PLLC, Greensboro, North Carolina; Angel R. Gordon, MORRIS, SCHNEIDER & PRIOR, LLC, Atlanta, Georgia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Haywood M. Clayton and Sylvia K. Clayton appeal from the district court's orders granting Ameriquest Mortgage Company's motion to enforce the settlement agreement between the parties and denying the Claytons' motion for reconsideration of that order. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *See Clayton v. Ameriquest Mortgage Co.*, No. CA-02-415-1 (M.D.N.C. Apr. 5, 2004 & filed June 18, 2004; entered June 21, 2004). In light of this disposition, we deny the Claytons' motion for a stay pending appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:02CV00415

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON, Plaintiff, v. AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; and MORRIS, SCHNEIDER & PRIOR, LLC, Defendants.	**DEFENDANT AMERIQUEST MORTGAGE COMPANY'S RESPONSE TO PLAINTIFFS' "MOTION FOR RECONSIDERATION" AND "MOTION TO AMEND ORDER WITH A MORE DEFINITE STATEMENT"**

(Filed Apr. 20, 2004)

Defendant, Ameriquest Mortgage Company ("Ameriquest"), by and through its undersigned counsel and pursuant to LR7.3(f), respectfully submits its Response to the document filed by Plaintiffs on April 15, 2004 entitled "Plaintiffs' Motion for Reconsideration of the Order of this Court Granting Defendant Ameriquest Mortgage Company's Motion to Enforce Settlement Agreement and Motion to Amend Order with a More Definite Statement" ("Plaintiffs' Motions") and to the brief in support of Plaintiffs' Motions.

ARGUMENT

On April 5, 2004, the Court issued its Memorandum Opinion and Order granting Ameriquest's Motion to Enforce Settlement Agreement (the "April 5 Order") in which the Court, pursuant to the terms of the parties' settlement, ordered that Ameriquest and Plaintiffs file

dismissals and withdrawals, etc., in this action and in the various other actions between them and ordered Plaintiffs to execute a warranty deed to Ameriquest for certain real property. The settlement terms enforced by the Court's April 5 Order were clearly set forth on the record following the Court's September 23, 2003 Settlement Conference, and such terms are definite and unambiguous.

As evidenced by a letter to Plaintiffs from counsel for Ameriquest dated April 15, 2004 (copy attached hereto as Exhibit A) and by file-stamped (or "received" stamped) copies of all of the withdrawals and dismissals required by Ameriquest (copies attached hereto as Exhibit B), Ameriquest has complied fully with the Court's April 5 Order. There is no basis for the relief requested in Plaintiffs' Motions, and Ameriquest requests that the Court deny them and direct Plaintiffs to comply with the Court's April 5 Order.

WHEREFORE, Defendant Ameriquest Mortgage Company respectfully requests that the Court:

1. Deny Plaintiffs' Motions;

2. Direct Plaintiffs to comply with the Court's Memorandum Opinion and Order dated April 5, 2004; and

3. Award Ameriquest such other and further relief as it deems just and proper.

This the 20th day of April, 2004.

/s/ Stuart C. Gauffreau
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April 15, 2004

Via Facsimile (letter only) and U.S. Mail

Mr. Haywood M. Clayton
Mrs. Sylvia K. Clayton
P.O. Drawer 2255
Chapel Hill, NC 27515

Re: Compliance with Order Enforcing Settlement Agreement with Ameriquest Mortgage Company ("Ameriquest")

Dear Mr. and Mrs. Clayton:

We received the Court's Order and Memorandum Opinion dated April 5, 2004, in which the Court granted Ameriquest's Motion to Enforce Settlement Agreement, ordered that the parties file all of the dismissals and withdrawals, etc. in the various actions, and ordered that you execute a warranty deed to Ameriquest for the lot adjacent to the residence at 1147 Burning Tree Drive in Chapel Hill.

Pursuant to the Court's Order, we are enclosing for your review and signature copies of the following:

(1) The parties' Stipulation of Voluntary Dismissal With Prejudice in 02-CV-415; and

(2) The Warranty Deed for the Adjacent Lot.

We have signed the Stipulation of Voluntary Dismissal With Prejudice in 02-CV-415 on behalf of Ameriquest and submitted it to the Court. Once you sign the enclosed copy of the Stipulation, you may submit it directly to the Court to complete the dismissal with prejudice of 02-CV-415. Regarding the Warranty Deed, please sign where indicated, have your signatures notarized, and return it to us for recording.

Pursuant to the Court's Order, Ameriquest has filed or submitted to the courts for filing the following documents (service copies of which are enclosed):

(1) Ameriquest's Notice of Withdrawal of Motion for Sanctions in 03-CvS-760;

(2) Ameriquest' s Notice of Withdrawal of Motion for Attorneys' Fees in 03-CvS-760;

(3) Ameriquest's Notice of Withdrawal of Motion for Sanctions in 03-SP-125;

(4) Ameriquest's Notice of Withdrawal of Motion for Sanctions Pursuant to Bankruptcy Rule 9011 in 02-82063;

(5) Ameriquest's Notice of Withdrawal of Motion for Sanctions Pursuant to-Bankruptcy Rule 9011 in 03-82095;

(6) Ameriquest's Notice of Satisfaction of Judgment in 02-82063; and

(7) Ameriquest's Notice of Waiver of Award of Attorneys' Fees in 03-CV-527.

Finally, as a matter of convenience to you, we have enclosed copies of the various withdrawals and dismissals that we believe you should sign and file in order to carry out the terms of the settlement. Of course, you may prefer to draft your own versions of these withdrawals and dismissals. Enclosed are:

(1) Notice of Withdrawal of Motion for Sanctions in 00-SP-71;

(2) Notice of Withdrawal of Motion to Amend Order in 00-SP-71;

(3) Notice of Withdrawal of Motion for Sanctions in 03-SP-125;

(4) Voluntary Dismissal of Appeal in 03-SP-125;

(5) Voluntary Dismissal With Prejudice in 03-CvS-760;

(6) Haywood Clayton's Notice of Withdrawal of Motion to Vacate Order of Dismissal and to Amend Orders of Court in 01-83187;

(7) Haywood Clayton's Notice of Withdrawal of Motion to Vacate Order of Dismissal and to Amend Orders of Court in 00-81622;

(8) Haywood Clayton's Notice of Withdrawal of Motion for Sanctions in 01-83187; and

(9) Haywood Clayton's Notice of Withdrawal of Motion Sanctions in 00-81622.

Please sign and file these withdrawals and dismissals (or your version of them) at your earliest convenience and send us file-stamped copies of them.

Thank you for your assistance with these matters.

Sincerely yours,

Nexsen Pruet Adams Kleemeier,
A Professional Limited Liability Company

/s/ Stuart C. Gauffreau
Stuart C. Gauffreau

SCG/cnl
Enclosures

cc: D. Beth Langley, Esq. (w/out encls.)
Benjamin A. Kahn, Esq. (w/out encls.)
M. Jay DeVaney, Esq. (w/out encls.)
Edward P. Lord, Esq. (w/out encls.)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
03 SP 125

NORTH CAROLINA

ORANGE COUNTY

IN THE MATTER OF THE FORECLOSURE OF THE DEED OF TRUST Dated February 8, 1999, and Recorded in Book 1874, Page 473 in the Orange County Registry, Executed by HAYWOOD M. CLAYTON and wife, SYLVIA CLAYTON, By BARDEN W. COOKE, Substitute Trustee.	**NOTICE OF WITHDRAWAL OF MOTION FOR SANCTIONS**

(Filed April 20, 2004)

Pursuant to the Court's Order of April 5, 2004 granting Ameriquest Mortgage Company's Motion to Enforce Settlement Agreement in M.D.N.C. Case No. 02-CV-415, Haywood M. Clayton and wife, Sylvia Clayton hereby voluntarily withdraw their Motion for Sanctions filed with this Court on July 8, 2003, with prejudice to refiling.

This the ___ day of April, 2004.

Haywood M. Clayton, *Pro Se*

Sylvia K. Clayton, *Pro Se*

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
03 SP 125

NORTH CAROLINA

ORANGE COUNTY

IN THE MATTER OF THE FORECLOSURE OF THE DEED OF TRUST Dated February 8, 1999, and Recorded in Book 1874, Page 473 in the Orange County Registry, Executed by HAYWOOD M. CLAYTON and wife, SYLVIA CLAYTON, By BARDEN W. COOKE, Substitute Trustee.	**VOLUNTARY DISMISSAL OF APPEAL**

(Filed April 20, 2004)

Pursuant to the Court's Order of April 5, 2004 granting Ameriquest Mortgage Company's Motion to Enforce Settlement Agreement in M.D.N.C. Case No. 02-CV-415, Haywood M. Clayton and wife, Sylvia Clayton hereby voluntarily dismiss their Notice of Appeal filed on September 5, 2003, with prejudice to refiling.

This the ___ day of April, 2004.

Haywood M. Clayton, *Pro Se*

Sylvia K. Clayton, *Pro Se*

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:02CV00415

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON, The Claytons, v. AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; and MORRIS, SCHNEIDER & PRIOR, LLC, Defendants.	**DEFENDANT AMERIQUEST MORTGAGE COMPANY'S MOTION TO SHOW CAUSE WHY PLAINTIFFS SHOULD NOT BE HELD IN CIVIL CONTEMPT**

(Filed Oct. 12, 2004)

Defendant Ameriquest Mortgage Company ("Ameriquest"), by and through its undersigned counsel and pursuant to LR7.3, respectfully moves the Court for an order to show cause why Plaintiffs Haywood M. Clayton and Sylvia K. Clayton ("Plaintiffs" or "the Claytons") should not be held in civil contempt for violating the following orders of the Court in this action: (1) April 5, 2004 Order granting Ameriquest's Motion to Enforce Settlement Agreement; (2) June 18, 2004 Order denying Plaintiffs' Motion for Reconsideration of the Order enforcing the Settlement Agreement; and (3) August 17, 2004 Order denying Plaintiffs' Motion for Stay Pending Appeal. In support hereof, Ameriquest shows unto the Court as follows:

1. On April 5, 2004, the Court issued a Memorandum Opinion and corresponding Order granting Ameriquest's Motion to Enforce Settlement Agreement (Docket #'s 155

and 156). The Court stated that "it is clear the parties agreed to release all claims and withdraw all motions, in any court, regarding this dispute" (Docket # 155 at p. 6). Among other rulings, the Court directed that the Parties "file voluntary dismissals with prejudice as to all claims" and that they do so "both in this Court and in others," and the Court directed the Claytons to "execute a

* * *

NEXSEN | PRUET
ADAMS KLEEMEIER

701 Green Valley Road
Suite 100 (27408)
P.O. Box 3463
Greensboro, NC 27402

T 336.373.1600
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Nexsen Pruet Adams
Kleemeier, PLLC
Attorneys and
Counselors at Law

Charleston, Charlotte, Columbia, **Greensboro**, Greenville, Hilton Head, Myrtle Beach

August 23, 2004

Via Facsimile (letter only) and U.S. Mail

Mr. Haywood M. Clayton
Mrs. Sylvia K. Clayton
P.O. Drawer 2255
Chapel Hill, NC 27515

Re: Compliance with Order Enforcing Settlement Agreement with Ameriquest Mortgage Company ("Ameriquest")

Dear Mr. and Mrs. Clayton:

We received the Court's Memorandum Order dated August 17, 2004, in which the Court denied your Motion for Stay Pending Appeal. As a result, there is no stay of the Court's Order and Memorandum Opinion dated April 5, 2004, in which the Court granted Ameriquest's Motion to Enforce Settlement Agreement, ordered that the parties file all of the dismissals and withdrawals, etc. in the various actions (which Ameriquest has done), and ordered that you execute a warranty deed to Ameriquest for the lot adjacent to the residence at 1147 Burning Tree Drive in Chapel Hill. Accordingly, I am writing to request that you comply with the April 5 Order enforcing the settlement agreement.

To that end, we are enclosing for your review and signature a copy of the Warranty Deed for the Adjacent Lot. Please sign the Warranty Deed where indicated, have your signatures notarized, and return it to us for recording.

Also, as a matter of convenience to you, we have enclosed copies of the various withdrawals and dismissals that we believe you should sign and file in order to carry out the terms of the settlement. Of course, you may prefer to draft your own versions of these withdrawals and dismissals. Enclosed are:

(1) Notice of Withdrawal of Motion for Sanctions in 00-SP-71;

(2) Notice of Withdrawal of Motion to Amend Order in 00-SP-71;

(3) Notice of Withdrawal of Motion for Sanctions in 03-SP-125;

(4) Voluntary Dismissal of Appeal in 03-SP-125;

(5) Voluntary Dismissal With Prejudice in 03-CvS-760;

(6) Haywood Clayton's Notice of Withdrawal of Motion to Vacate Order of Dismissal and to Amend Orders of Court in 01-83187;

(7) Haywood Clayton's Notice of Withdrawal of Motion to Vacate Order of Dismissal and to Amend Orders of Court in 00-81622;

(8) Haywood Clayton's Notice of Withdrawal of Motion for Sanctions in 01-83187; and

(9) Haywood Clayton's Notice of Withdrawal of Motion Sanctions in 00-81622.

Please sign and file these withdrawals and dismissals (or your version of them) at your earliest convenience and send us file-stamped copies of them.

Thank you for your assistance with these matters.

Sincerely yours,

Nexsen Pruet Adams Kleemeier,
A Professional Limited Liability Company

/s/ Stuart C. Gauffreau
Stuart C. Gauffreau

SCG/sab
Enclosures
cc: D. Beth Langley, Esq. (w/out encls.)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Case No. CA-05-2011

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON, Plaintiffs-Appellants, v. AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; and MORRIS, SCHNEIDER & PRIOR, LLC, Defendants-Appellees.	**APPELLEE AMERIQUEST MORTGAGE COMPANY'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS APPEAL AND FOR SANCTIONS**

(Filed Nov. 03, 2005)

Appellee Ameriquest Mortgage Company ("Ameriquest"), by and through its undersigned counsel and pursuant to Rules 27 and 38 of the Federal Rules of Appellate Procedure, respectfully submits this Reply in Support of its Motion to Dismiss the appeal of Appellants Haywood M. Clayton and Sylvia K. Clayton (collectively the "Claytons" or "Appellants") as frivolous and sanctioning the Claytons accordingly. In support thereof, Ameriquest shows unto the Court the following:

1. Ameriquest filed its Motion to Dismiss the Appeal and for Sanctions on or about October 7, 2005.

2. On or about October 7, 2005, the Claytons filed their Informal Brief.

3. On or about October 18, 2005, Ameriquest filed a Motion for Extension of Time to file Informal Brief, which Order was granted on or about October 20, 2005, granting

Ameriquest to and including November 28, 2005 to file and serve its Informal Brief.

4. On or about October 24, 2005, the Claytons filed and served upon Ameriquest their Response and Objection to Ameriquest's Motion to Dismiss Appeal and for Sanctions.

5. On or about October 20, 2005, The Honorable Wade Barber, Senior Resident Judge, Orange County, North Carolina, entered the following Orders in the Superior Court Division, Orange County, with regard to 04-CVS-1706 in the action styled *Haywood M. Clayton and Sylvia K. Clayton, Plaintiffs v. Ameriquest Mortgage Company and Barden W. Cooke* in conformity with his rulings in the September 7, 2005 hearing on several motions:

(a) Order of Dismissal, a copy of which is attached hereto as *Exhibit A*;

(b) Order Denying Plaintiffs' Motion for Sanctions Against Barden W. Cooke, denying Plaintiffs' Motion for Sanctions against Ameriquest Mortgage Company; and denying Plaintiffs' Motion for Relief from Order of this Court [in 03-SP-125], a copy of which is attached hereto as *Exhibit B*; and

(c) Pre-Filing Injunction against the Claytons, a copy of which is attached hereto as *Exhibit C*.

6. A copy of the entire transcript of the September 7, 2005 hearing before Judge Barber in Orange County, North Carolina, Superior Court is attached hereto as *Exhibit D*.

7. On or about October 26, 2005, The Honorable N. Carlton Tilley, Jr., United States District Court Judge, entered the following Orders in conformity with his rulings in the September 6, 2005 hearing in the underlying matter styled *Haywood M. Clayton and Sylvia K. Clayton, Plaintiffs v. Ameriquest Mortgage Company*, 1:02-CV-00415:

(a) Memorandum Order Granting Ameriquest Mortgage Company's Motion to Show Cause, a copy of which is attached hereto as *Exhibit E*; and

(b) Memorandum Order Granting Ameriquest's Motion for Pre-Filing Injunction, a copy of which is attached hereto as *Exhibit F.*

8. A copy of the entire transcript of the September 6, 2005 hearing in 1:02-CV-00415 is attached hereto as *Exhibit G.*

9. The issues raised by the Claytons in the instant appeal have been addressed and adjudicated by state and federal courts, including this Court, on numerous occasions. The Clayton's allegations all relate to the same series of events surrounding the foreclosure of their home. As the lower Court succinctly stated: "None of these claims have been successful." *See* Exhibit F at p. 7.

10. For the reasons set forth in the numerous briefs Ameriquest has presented to this Court in opposition to the Claytons' prior appeals, for the reasons set forth in the rulings issued by the state and federal courts who have previously reviewed these same issues, and for the reasons set forth in Ameriquest's Motion, Ameriquest seeks dismissal of the instant appeal, with prejudice.

WHEREFORE, Ameriquest respectfully requests that this Court:

1. Invoke its powers pursuant to Rule 38 of the Federal Rules of Appellate Procedure, sanction the Claytons for filing a frivolous appeal, award Ameriquest an appropriate amount of damages and single or double costs, and prohibit the Claytons from filing any further lawsuits in any court in the Fourth Circuit until the damages and costs awarded to Ameriquest are paid;

2. Dismiss the instant appeal with prejudice; and

3. Award Ameriquest such other and further relief as the Court deems just and proper.

This the 2nd day of November, 2005.

/s/ D. Beth Langley
D. Beth Langley
North Carolina State Bar No. 19117
Stuart C. Gauffreau
North Carolina State Bar No. 23122
Attorneys for Appellee
Ameriquest Mortgage Company

OF COUNSEL:

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STATE OF NORTH CAROLINA COUNTY OF ORANGE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 04-CVS-001706

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON,

Plaintiffs,

v.

AMERIQUEST MORTGAGE CO. and BARDEN W. COOKE,

Defendants.

TRANSCRIPT VOLUME I OF I

AND

STATE OF NORTH CAROLINA COUNTY OF ORANGE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 03-SP-125

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON,

Plaintiffs,

v.

BARDEN W. COOKE,

Defendant.

TRANSCRIPT VOLUME I OF I

The above-captioned cases coming on for hearing at the September 6, 2005, Civil Session of the Superior Court of Orange County, Hillsborough, North Carolina, before the Honorable Wade Barber, Judge presiding, the following proceedings were had, to wit:

Reported on 9/7/2005 by: Susanne M. Newman, RPR

Date request received: 9/14/05

Date delivered: 10/3/05

* * *

[7] November of 2000, the Claytons – excuse me. That was actually in January the Claytons filed a motion to vacate. And Judge Tilley in August, a few weeks back, denied that motion.

The basis for the Claytons' motion was that Judge Beatty had some sort of bias and should not have ruled on that motion to remand. Judge Tilley denied that motion for various reasons: One, that there was no bias; two, that, on the futility of the motion, itself.

The second one, which really has more bearing on this motion, it has to do with the 415 case and that is the Claytons' Rule 60 motions with regard to what they are referring to as the newly-discovered evidence. And if you'll, kind of walking through Judge Tilley's memorandum opinion, it outlines the various relief that the Claytons are seeking and it in many ways mirrors the Rule 60 motion that the Claytons have filed in the 03-SP-125 case on August 29, five days after Judge Tilley's August 24 order and memorandum opinion.

Same sorts of relief that the Claytons are seeking, the same sorts of allegations that they're making with regard

to the underlying foreclosure action stating that material facts were withheld from them, stating allegations with regard to Mr. DeVaney and Mr. Cook, stating that there was this illegal settlement on September 23.

And it's very interesting, if you'll take a look at

* * *

[11] sweetener to get the settlement so that we could walk away without any liability. And that's part of the federal court action.

THE COURT: So you're saying after that settlement, they violated the settlement by proceeding with the foreclosure action.

MR. CLAYTON: Well, the foreclosure action had occurred but because of the uniqueness of North Carolina law, I had to file, I think it was a 34 counterclaim to the foreclosure because it's so limited and other things. And basically what they were saying is, No, that stands and you have to give up all of your claims. They went further and I never could understand that.

THE COURT: Had the house been foreclosed on? Had the foreclosure, was the foreclosure complete at the time of the September 23 settlement agreement?

MR. CLAYTON: I'm confident, Judge, there will be disagreement on that. There was filing and activities that occurred after 9/23. That is included in the case that's 1706.

Our position is that following 9/23, in an abundance of caution, we did put background information in for the Court. But we're not trying to drag in federal claims

because the Court has ordered us to settle. I disagree with it.

And for their information, that's what's being

* * *

[15] MR. CLAYTON: No, sir. I did not dismiss these because – and I mentioned this to Judge Tilley yesterday and he did not rule on it. I mentioned to him that it was pending. And our position was Mr. Barden Cooke, the trustee, was not a party to 415. And he did not rule. That ruling is forthcoming. But I submit, Judge, that it's moot.

Ms. Langley mentioned earlier that 527 represented 125 when I removed it and, in fact, I did. Sorry. My mouth got dry. We did appeal it to the Fourth Circuit. I would like to share with the Court the reason that it was sent back because this was their argument. Removal once a district judge has ruled, it's unappealable. So they didn't rule on merit. He just simply said he remanded it; can't touch it. So I think that's –

THE COURT: That was the foreclosure action?

MR. CLAYTON: Yes, sir. But the point that I'm making now is we're back here today on our motion which points out the foreclosure should never have been here in the first place. He should never have been here in the first place because they cited as a governing statute a federal statute. And my position is it's null, it's void, and my motion and brief in support of that I pointed out in great detail even with case law that this case should not have been heard here and a finding on merit is inappropriate.

Now, frankly, Judge, if they had dismissed it on 9/23 [16] or shortly after, we wouldn't even be back here because it

would have been dismissed, but they didn't. They left it alive. Now, why should they be able to leave it alive and have someone say, But you can't respond to it.

THE COURT: Now, is the only thing they have done in violation of the foreclosure agreement is – I mean, settlement agreement is not to dismiss the foreclosure action?

MR. CLAYTON: That's our opinion, yes, sir. But if they don't dismiss it, the Court doesn't order them to dismiss it, I'm saying, Hey, it's live; it's yours. Your order still operates.

THE COURT: Did you tender them a deed for your house in accordance with the settlement agreement?

MR. CLAYTON: No, sir. They took it under the foreclosure through the trustee; therefore, I'm maintaining that the orders that operated out of this Court are operative and that jurisdiction is an appropriate question.

THE COURT: If they took it under foreclosure, then what's left of the foreclosure action after the foreclosure is completed?

MR. CLAYTON: That's what we've been arguing. They have been simply saying we won't dismiss it. And we're saying, Okay, if you won't dismiss it, we will bring up the legal issues which are our rightful defenses to it.

THE COURT: That's what needs to get a handle

* * *

[30] continue to receive a bill for those taxes after 9/23.

THE COURT: Did you pay them?

MR. CLAYTON: I did not.

THE COURT: Did someone else pay them?

MR. CLAYTON: Yes, they did.

THE COURT: All right. Next, how were you injured?

MR. CLAYTON: I was not injured financially because someone else paid them.

THE COURT: All right.

MR. CLAYTON: But, Judge, we have a right to expect those who are dealing with us to adhere to the law.

THE COURT: It would appear that it did adhere to the law, and the Court will allow the motion to dismiss.

MR. BROWN: In view of the Court's rulings, if there's an objection, I'll withdraw the motion to sustain the litigation. That was an alternative motion.

THE COURT: Then that gets us, that takes care of Mr. Cooke's, takes care of Mr. Cooke in case 1706. Then let's go ahead and deal with Mr. Cooke in 125. You made a motion for relief from order of the Court.

MR. CLAYTON: That's my motion.

THE COURT: All right. Let's address that issue.

MR. CLAYTON: That motion, Judge, is based on [31] the documents in support of the underlying foreclosure notice of hearing and subsequent action. In the motion and the memorandum of law in support, it is clear

that all of these documents are couched under 12 USC 3802.

For that reason, I would ask that the Court dismiss the underlying action, 125, to want of jurisdiction. The very documents that Mr. Cooke brought into court – I can't say that for sure because in a footnote I indicate I wasn't sure if the omission was intentional or unintentional. I had not found the note which tied everything together. Says clearly, This note and related security interests are governed by the Alternative Mortgage Transaction Act of 1982, 12 USC 3802 – I don't know how you pronounce e-t-s-e-q, but that's what it says.

THE COURT: Et seq.

MR. CLAYTON: Therefore, Judge, when the very document on which we signed and we agreed probably naively but nevertheless it says we're governed by federal statute yet they send it down to the state court. Go down to state court and say, Hey, you do the dirty work. Judge, it should be dismissed for want of jurisdiction.

THE COURT: The foreclosure act.

MR. CLAYTON: Yes, sir.

THE COURT: All right. That motion is denied. Yes, sir.

* * *

[36] dismissible pursuant to the North Carolina foreclosure statutes.

Moreover, everything he's asked here with the exception of what the Court has heard from Mr. Brown on, his allegations submitted against Mr. Cooke, have already

been heard by this Court and disposed of. And they're here again to dispose of again. It is improper, it constitutes harassment, it constitutes abuse of process, Your Honor, and it's time for it to stop.

We ask for sanctions against the Claytons in accordance with Rule 11. We ask for prefiling injunctions to prohibit further filings on this Court by the Claytons against Ameriquest for any matter related to the note or deed of trust which should have been disposed of at the end of the foreclosure proceedings. Thank you, Your Honor.

MR. BROWN: Your Honor, we'd file a separate motion that would concur that it's similar against all.

THE COURT: Mr. Clayton, in your case 1706 filed in 2004, what new claims do you state against Ameriquest that have not been previously ruled on in this Court or in federal court?

MR. CLAYTON: Those claims, Judge, are that there were activities that occurred after 9/23. But you've already addressed it and I don't want to antagonize you by repeating something I know where you're going to go because [37] you already ruled in the earlier ruling denying that I didn't get harmed because they continued to do what they did.

But there's one other thing that I should add because this has occurred since the filing of 1706 and this was a major dispute in what I consider the validity of the settlement. Ameriquest maintained that they were responsible for sending in some tax bill. They could take all this property and they didn't even have to give us a tax form. That's part of the filings but that's the federal action,

Judge. But it does impact my state taxes and I will tell the Court that –

THE COURT: What do you mean, a tax form?

MR. CLAYTON: 1099, 1098-A saying we got this property from you, this is the value of it, and you better file your taxes that says this is what's occurred. I mean, we have those obligations. And, Judge, I'll tell you, I failed in the federal court on this so I wouldn't be shocked if I failed again but I see a genuine conflict here between the rulings of the court and the IRS. I cannot file my taxes without a sum certain arithmetic number. I've been compelled to convey property without a sum certain by order of the Court.

Now, I will acknowledge they finally sent a copy of a 1099, I think a 1098-A curiously on April 16 of 2005 for transactions that occurred back in, according to them, 2003.

[38] So when I tell the Court that this is ongoing, the absence of a tax form, the absolute stubborn refusal to issue it, we're not just reaching out in midair. These, I don't understand it.

Now, the tax form was the essence of it. I did file an appeal and I failed and there's another going up on other issues now because everything's there, including the tax issues, which is the one she got on her BlackBerry apparently about no tax forms and they say it's okay to do that because it's something else. And I don't want to get into that.

But they have handicapped us from – Judge, if they had simply just dismissed this action, if they said, okay, 9/23, you know, that's what I heard. That's what I heard.

But before we could reduce it to writing, they were including everybody under the sun and everything they would ever do to us. So I submit that the tax form just really stands out.

Now, that one, Judge, I do have harm on because within the two-year window within which to file the accountability for what they – now, they got a chance to fill in the blank. We never had a say in that. I kind of thought that was supposed to be a part of the settlement, too. They filled in the blank. They sent it to us. And I will file accordingly and do the best I can.

I said – I filed an estimated return. I'm not going to just skip it and blame that on Ameriquest. But they, in [39] fact, did delay sending even the tax form for a year and a half. And they're federally mandated to do that. That's the reason I stand here and say –

THE COURT: When you conveyed the vacant lot to them, they were required to give you a 1098?

MR. CLAYTON: I don't know if it's a 1098 or 1099, Judge. I got both. I got both. I don't know which is which. But that occurring in 2003, whether under settlement, which is our contention, or under foreclosure, which is their contention, either way, as of the last day of January, but on that particular calendar year, I think it was the first of February, they were obligated by federal statute to supply us a 1099. Wasn't done.

There's actually in federal court – and, of course, this is part of that appeal – documents saying, well, we don't have to. We've researched it. We don't even have to do that. And I think that's just going to create an interesting appeal so the IRS and the judge can decide which way it's

supposed to go. But I'm just here telling you, Judge, we're not the bad guys and the fact that we've moved out of the house, we gave it to them, they want to rub our nose in it, and that's what's happened.

THE COURT: All right. Your motions with regard to the dismissal or ending this proceeding are allowed now are to the issue of sanctions. And the Court will allow prefiling

* * *

[42] CERTIFICATE

STATE OF NORTH CAROLINA COUNTY OF ORANGE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 04-CVS-001706

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON,

Plaintiffs,

v.

AMERIQUEST MORTGAGE CO. and BARDEN W. COOKE,

Defendants.

TRANSCRIPT VOLUME I OF I

AND STATE OF NORTH CAROLINA ORANGE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 03-SP-125

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON, Plaintiffs,	:	TRANSCRIPT VOLUME I OF I
v.	:	
BARDEN W. COOKE, Defendants.	:	

I, Susanne M. Newman, the officer before whom the foregoing proceeding was taken, do hereby certify that said hearing, pages 3 through 41 inclusive, is a true, correct, and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto and am not financially or otherwise interested in the outcome of the action.

/s/ Suzanne M. Newman
Susanne M. Newman, RPR
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HAYWOOD CLAYTON,
SYLVIA K. CLAYTON,

Plaintiffs,

vs.

AMERIQUEST MORTGAGE COMPANY,

Defendant. /

Civil Action No.
1:02CV415

Greensboro, North Carolina
September 6, 2005

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE N. CARLTON TILLEY, JR.

UNITED STATES DISTRICT JUDGE

APPEARANCES:

Appearing Pro Se: HAYWOOD M. CLAYTON
SYLVIA K. CLAYTON
Post Office Drawer 2255
Chapel Hill, North Carolina 27515

For the Defendant: DENA BETH LANGLEY, ESQUIRE
Nexsen Pruet Adams Kleemeier, PLLC
Post Office Box 3463
Greensboro, North Carolina 27402

Court Reporter: Jane F. Calhoun, RPR
Room 101, U.S. Courthouse Building
324 West Market Street
Greensboro, North Carolina 27401
(336) 332-6033

Proceedings reported by stenotype reporter.

Transcript produced by computer aided transcription

* * *

[7] than about ten motions that the Claytons have filed in various proceedings. There is a new lawsuit. Let me – one, two, three, four, five, six. I want to make sure I don't overstate, so at least six – there have been, and that's not counting the bankruptcy proceedings where motions were filed in those motions to vacate. There have been – there is a new lawsuit that we have to respond to, and we'll be in state court tomorrow on that lawsuit.

THE COURT: Is that 1706?

MS. LANGLEY: Yes, sir. 1706, the Orange County lawsuit. And we're in front of Judge Barber on that lawsuit tomorrow with various motions.

And then interestingly, we received, actually through counsel for the trustee in the 03SP125, the foreclosure case, we received a copy from Mr. Cook's attorney, a new motion that the Claytons filed last Monday that they want to be heard in the old foreclosure action, that is, in essence, a rehash again of much of what was in the 415 case, that they want – they have filed a Rule 60 motion in the foreclosure action to bring back many of the claims that were in the 415 case, and are arguing that the state court foreclosure statute is unconstitutional, that this is only federal jurisdiction to have heard the foreclosure claims and the defenses that the Claytons had to the foreclosure proceedings, many of which were already heard in 415 and were part of the 760 claim that they have already filed a voluntary [8] dismissal on, and I'll be glad to hand up a copy of that to the Court. If I may approach.

THE COURT: Sure.

MS. LANGLEY: We were not served with a copy of that. I'm not exactly sure why procedurally, unless it is

because the foreclosure was actually propounded by Mr. Cook as the trustee, generally the beneficiary of the deeds of trust are served. We were not served on the certificate of service, but regardless, we now have a copy of it.

Much of this, again, will roll into the motion for prefiling injunction but, Your Honor, it is clear by not only the Claytons' actions, but by their filings, by their half-hearted efforts even now in not fully complying with this Court's order, that they're basically – I hate to use short phrases, but they are thumbing their noses at this Court's April 2004 order. There was an agreement, this Court enforced it. We've been to the Fourth Circuit, we've been back, and they are still not complying.

This Court specifically has the authority to enforce its orders. We are requesting the Court to enforce its orders, to really put an end to this. We're asking the Court to take the additional step to put an end to this in our motion for prefiling injunction.

THE COURT: Tell me specifically with regard to civil contempt what you're asking the Court to do.

* * *

[40] CERTIFICATE

I, JANE F. CALHOUN, RPR, United States District Court Reporter for the Middle District of North Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of the proceedings had in the within-entitled action; that I reported the same to typewriting through the use of Computer-Aided Transcription.

Date: 10-26-05

/s/ Jane F. Calhoun
Jane F. Calhoun, RPR
Official Court Reporter

In the Supreme Court of the United States

Haywood M Clayton, Petitioner

v

Ameriquest Mortgage Company

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Haywood M Clayton
Pro Se
PO Drawer 2255
Chapel Hill, NC 27515
(919) 990-1166

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In the Supreme Court of the United States

Haywood M Clayton, Petitioner

v

Ameriquest Mortgage Company

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Plaintiff, Haywood M Clayton, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is unreported and filed on April 18, 2006 on petition for Rehearing and Rehearing En Banc arising from an unpublished *per curiam* opinion of the court issued 28 Feb 2006 in Case No. CA-05-2011 and Case No. CA-05-2346 affirming an order of the District Court for the Middle District of North Carolina.

JURISDICTION

The Judgment of the court was entered on April 18, 2006 and this petition writ for petition is timely filed within the 90 days allowed. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 6100 of the United States Code, Title 26 Subtitle 68, Subchapter B Part I; the doctrine of *Stare Decisis* and comity with North Carolina General Statutes § 22-2 and N.C.R.Civ.P. Rule 41

STATEMENT

The underlying facts and case arise from an alleged breach of contract by Ameriquest in May 1999 when an employee issued a counterfeit check in the name of plaintiff Haywood Clayton. This act was committed in the State of California and the check was drawn on an account (not that of Haywood Clayton) in New Jersey. Ameriquest has admitted to this fact. As a result of this and subsequent acts by Ameriquest including a long period of denial of the

act; plaintiff informed Ameriquest in June 1999 of his intent to payoff the loan. Ameriquest refused to comply with requests for a payoff amount to both plaintiff and potential lenders to whom they furnished false and damaging information that the check was issued by plaintiff and was in fact 'NSF".

The petitioner filed a federal action May 28, 2002 in the MDNC captioned 1:02CV0415 based upon diversity among others a claim of breach of contract.

On May 1, 2003; Ameriquest caused state action 03-SP-125 (a foreclosure action) to be filed in state court of North Carolina even though all claims and remedies and the underlying facts were already available to them in federal court. Petitioner/plaintiff removed the action to the MDNC for joinder with the federal action. Ameriquest opposed the removal, and the District Court remanded the case to the state jurisdiction. As such, the District Court was well aware that the petitioner was the respondent and lacked the legal standing pursuant to N.C.R.Civ.P. Rule 41 to dismiss the action.

The District Court ordered a pre-trial settlement conference on Sep 23, 2003 at which time Judge Beaty instructed that any settlement must be global and cover all claims in both state and federal court.

An agreement was announced in open court providing "mutual releases of all claims, know or unknown, wherever they may have been stated or are stated from the beginning of time until the present" (verbatim from Transcript of the hearing) These claims included monetary awards from sanctions in the bankruptcy court for which the time of appeal had expired and 'were final', but were included in the global settlement. That agreement included

03-SP-125 *except* it was Ameriquest who was to dismiss this action instead of the petitioner. The District Court ordered the petitioner to file notice of dismissal (under threat of sanctions) which had no effect in the state court and allowed Ameriquest to leave an action from which they derived benefit and imputed liability to the petitioner in spite of explicit language announced in open court that "There's no admission of liability on the part of Ameriquest or on the part of the Plaintiffs" (verbatim from Transcript of the 9/23/03 hearing in the words of counsel for Ameriquest.)

Petitioner relied upon the common usages of the words "mutual releases of all claims" "wherever they *may have been stated or are stated*" "from the beginning of time until the present" as including 03-SP-125 filed five (5) months earlier by Ameriquest.

The order of the District Court that the petitioner dismiss 03-SP-125 is contrary to law and contrary to the explicit language of the oral settlement. Even the federal courts are not empowered to issue an order which is contrary to law. " . . . parties should be able to regulate their conduct and enter into relationships with the reasonable assurance of the governing rules of law," *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1998) 46 Cal. 3d. 287, 296 Absent the assurances contemplated in *Maradi*, a citizen has no standard by which to regulate their behavior inside or outside the judicial system consistent with a civilized society.

Fundamental to any contracted agreement involving transfer of property is an agreed upon arithmetic sum certain price. *Creech v. Melnick*, 347N.C. 520, 527, 495 S.E 2d. 907, 911-12 (1998) Absence a known sum certain

amount, compliance with Title 26 of the United States Code is impossible. Taxes may not be accurately filed nor the statutorily mandated records be kept. This appears self-evident, and no case law found a contracted agreement which was enforced by the courts absent a sum certain amount. The District Court erred in ruling that Ameriquest was not obligated to supply tax documents to the petitioner. This was upheld by the Circuit Court in an unpublished *per curiam* judgment which is without precedential value. It is unclear: the intent of the court. To grant exception to Title 26 in this case is a departure from *Stare Decisis* and opens up the possibility of district court rulings which would not be in the public domain and allow powers to local judges not contemplated by the framers of the United States Constitution. It could open up a pandora's box allowing rulings just because the presiding judge did not like the litigant.

It was the unmistakable understanding of the petitioner on 23 Sept 2003 that all mutual claims be dismissed and that the sum certain payoff of the existing loan or financial claims by Ameriquest be equal to the sum certain amounts for the two properties transferred to Ameriquest by petitioner by the agreement of 23 Sep 2003. This understanding, in no way, waived the obligation of Ameriquest to present a sum certain amount acknowledging the value of the property transferred.

Any less is contrary to Title 26 and beyond comprehension. The role of the District Court was limited to the settlement agreement, whether or not it contained all the elements of an enforceable agreement, dismissed all claims by all parties and imputed liability to no one. The court has failed this role, and has in issuing orders that favor Ameriquest, imputed liability to the petitioner; made

an order regarding dismissal of 03-SP-125 which is beyond comprehension; but effectively leaves one claim for the benefit of Ameriquest.

REASONS FOR GRANTING THE PETITION

Through Title 26, Subtitle 68, Subchapter B, Part I, Section 6100, Congress mandated that sum certain records be maintained by taxpayers; that those records be supplied by entities consistent with that maintenance enabling citizens comply with the tax codes, filing and paying precise amounts to the Internal Revenue Service consistent with its Code. This case not only prevents petitioner from maintaining those records and filing accurate returns but exempts Ameriquest from the very mandates of that Title 26.

To order the transfer of property without sum certain amounts constitutes new law, inasmuch as this petitioner can find no agreement which has been enforced absent a sum certain amount. Furthermore, it is contrary to North Carolina General Statutes § 22-2 compelling that agreements involving real estate be in writing.

Finally, an order that a defendant/respondant dismiss a state case, in which he is a defendant/respondant is not well grounded in law, for it lacks any force of law except for the act of compliance by the defendant/respondant, which in this case avoids sanctions by the District Court.

The petitioner is *pro se* and as such may well make errors of form, from which petitioner requests the broadest possible latitude be given by the court. This court has the inherent power to correct its own records and rulings to speak the truth. Divergence by the District and Circuit

Court from customary and ordinary standards weigh strongly in favor of this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this the 17th day of July 2006.

/s/ Haywood M. Clayton
Haywood M Clayton
Pro Se
PO Drawer 2255
Chapel Hill, NC 27515
(919) 990-1166

[This Letter Was Faxed From Clerk To Attorney On October 4, 2006 At 3:23 P.M.]

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

July 24, 2006

Haywood Clayton
P.O. Drawer 2255
Chapel Hill, NC 27515

RE: Clayton v. Ameriquest Mortage Co.

Dear Mr. Clayton:

Returned are 39 copies of the petition for writ of certiorari in the above-entitled case postmarked on July 17, 2006 and received on July 21, 2006, which fails to comply with the Rules of this Court.

The text of the document must appear on both sides of the pages. Rule 33.1(b).

The order(s) of the Court of Appeals and the United States District Court must be included in the appendix. Rule 14.1(i). Each order must be reproduced so that it complies with Rule 33.1.

It is impossible to determine the timeliness without the lower Court opinions.

Kindly correct the petition so that it complies in all respects with the Rules of the Court and return it to this office promptly so that it may be docketed. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

This office shall retain one copy of the petition and your check in the amount of $300.00 in expectation of timely receipt of a properly prepared petition.

Enclosed are a copy of the Rules of the Court and memorandum concerning the preparation of a paid petition in booklet format.

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
William K. Suter, Clerk
By:

M. Blalock
(202) 479-3023

21 September 2006

The Honorable Clerk of the Supreme Court
of the United States
One First Street, NE
Washington, DC 20543 - 0001

Please find enclosed 40 copies a corrected Petition for a writ of certiorari captioned On Petition for A Writ of Certiorari to the United States Supreme Court as reflected in your letter of 24 July 2006 which now includes Appendixes reflecting the omitted documents, the corrections in form, and an original copy of the Certificate of Service served in accordance with Rule 29 and 28 U.S.C. § 1746.

Respectfully,

/s/ Haywood M. Clayton

Haywood M Clayton
Pro Se
PO Drawer 2255
Chapel Hill, NC 27515
(919) 990-1166

Enclosures

cc: D. Beth Langley; Stuart C Gaffreau: Nexsen Pruet Adams Kleemeier

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEF

(Received August 11, 2004)

Re: 04-1849 Clayton v. Ameriquest Mortgage

Directions

1. Preparation of Brief. The Court will consider this appeal according to the written issues, facts, and arguments appellant presents in the Informal Brief. Space is provided to present up to four issues. You may present more than four issues if you think such is necessary. The Court will not consider issues appellant does not specifically raise. Be brief. Write clearly. Print legibly or use a typewriter. Any documents you attach to the form must be numbered sequentially.

2. Copies Required.

* Send the Court the original and one copy of your Informal Brief. Address your mailing as follows:

Clerk
U.S. Court of Appeals, Fourth Circuit
U.S. Courthouse Annex, 5th Floor
1100 East Main Street
Richmond, VA 23219

* Send one copy of your Informal Brief to each of the other parties named in the appeal. If you would like a file-stamped copy of your brief returned to you, send an extra copy and a self-addressed, stamped envelope.

3. Certificate of Service Required. You must certify that you sent each of the other parties or attorneys complete copies of all documents you send the Court. Service

on a party represented by counsel shall be made on counsel. Be certain that your certification shows the complete name and mailing address of each party or attorney to whom copies were sent and the date of mailing.

4. Signature Required. You must sign your Informal Brief and all Certificates of Service. If appellant fails to sign the Informal Brief, the appeal will be subject to dismissal under this Court's Local Rule 45.

INFORMAL BRIEF

1. Jurisdiction (for appellants only)

A. What is the name of the court from which you are appealing?

United States District Court for the Middle District of North Carolina

B. What is the date(s) of the order or orders you are appealing?

April 5, 2004 and June 18, 2004

2. Timeliness of appeal (for prisoners only)

When did you give your notice of appeal to a prison officer for mailing to the United States District Court? Enter the exact date:

3. Issues on Appeal

Use the following spaces to tell the United States Court of Appeals for the Fourth Circuit why the judgment under review should be affirmed, reversed, or vacated and remanded. Appellants must provide a brief summary of the facts and

arguments that support their position that the judgment under review was wrong. Appellees may rely on the facts and law stated in that judgment or may advance alternative grounds for affirmance or dismissal. The parties may cite case law, but it is not required.

Issue 1.

PLEASE SEE ATTACHMENT

Supporting Facts and Argument.

PLEASE SEE ATTACHMENT

Issue 2.

PLEASE SEE ATTACHMENT

Supporting Facts and Argument.

PLEASE SEE ATTACHMENT

Issue 3.

PLEASE SEE ATTACHMENT

Supporting Facts and Argument.

PLEASE SEE ATTACHMENT

4. Relief Requested

What do you want the Court of Appeals to do? Identify exactly the relief you seek.

That the Order dated 5 April 2004 be reversed finding that no enforceable agreement exists to be compelled and that this case be transferred to state court as moved by plaintiffs. Further, that all orders in this and related matters by District Judge Beaty be vacated That the Order dated June 18, 2004 be reversed; but moot by reason of unenforceable settlement agreement.

5. Prior Appeals (for appellants only)

A. Have you filed other appeals in this court?
_X_ Yes ___ No

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

03-1952 Appeal denied

Other in mid 1990's Denied. Specific case information no longer available (unable to cite)

/s/ Haywood M. Clayton Sylvia K. Clayton
Signature
[Notarization Not Required]

HAYWOOD M CLAYTON
SYLVIA K. CLAYTON
[Please Print Your Name Here]

CERTIFICATE OF SERVICE
****

You must serve your papers on appeal on all persons served in the lower court case and complete the following certification:

I certify that on Aug 11, 2004 I mailed a complete copy of this Informal Brief and all attachments to all parties, addressed as shown below.

/s/ Haywood M. Clayton
Signature
[Notarization Not Required]

[List here each party's name and complete mailing address]

D. Beth Langley
Stuart C. Gaffreau
Nexsen Pruet Adams Kleemeier, PLLC
PO Box 3463
Greensboro, NC 27402-3463

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEF ATTACHMENTS

Re: 04-1849 Clayton v. Ameriquest Mortgage

3. Issues on Appeal

Issue 1.

The District Court erred in its order entered 5 April 2004 granting Ameriquest's Motion to Enforce Settlement Agreement to effectuate the terms of the September 23, 2003 agreement announced as a result of a court ordered pre-trial settlement conference with United States District Judge, James A. Beaty, Jr.

The court in its Memorandum Opinion of 5 April 2004 accompanying its Order that motions were set for hearing on 25 November 2003 and at this hearing, on motion of the Plaintiffs, Judge Beaty recused himself (p.4 of Memorandum Opinion) citing at footnote #4 "The details of the recusal are irrelevant to the issues at hand."

Issue 2.

The court erred by not finding relevant the basis and details of the recusal.

The plaintiffs motion for recusal was based upon a representation by a previous law clerk for Judge Beaty (now a Superior Court Judge in North Carolina: Judge Ripley Rand) that he should recuse himself from a state court proceeding based upon that clerkship and the negative bias he would bring to a state court proceeding involving the plaintiffs arising from that clerkship. Plaintiffs maintain that a bias so systemic that years after

Superior Court Judge Rand served as a clerk for Judge Beaty, that he remembered the plaintiffs and felt compelled to recuse based upon that service; that judge Beaty should have likewise recused at the start of this and other matters he has heard and ruled upon, each time in rulings adverse to plaintiffs. This failure to recuse poisons fruit of the tree with regard to each and every order made by Judge Beaty as it relates to the plaintiffs *including, but not limited to* his order and participation in the pre-trial settlement conference. The court erred by finding that the basis for the recusal was irrelevant.

Issue 3.

The court erred in its Memorandum Order entered June 18th 2004 denying reconsideration of its Order of 5 April 2004 finding "There is no reasonable concern of fraud when an agreement discussed in open court in the presence of both parties" [Memorandum Order at p.2 ¶ 3 In 5-7][1] and that the Agreement not be in writing as mandated by the North Carolina Statute of Frauds (N.C.Gen Stat § 22-2)

The presumption is that the settlement hearing is fair and unbiased, and that the Judge hearing the matter will have recused prior to the settlement hearing; *not after, on*

[1] Although relevant here as it relates to the necessity to address the details of the recusal of Judge Beaty: this discussion is within the context of Plaintiffs Motion for Reconsideration which was based upon the order compelling transfer of real properly in the absence of a written agreement (a violation of N C G Stat 22-2) and will be addressed in that context later: but the house of cards upon which these orders rest are mutually dependant upon an unbiased court; a matter no longer assured with the fact of Judge Beaty's recusal.

motion of plaintiff, to protect the integrity of the proceeding. The belated recusal by Judge Beaty taints this and every proceeding over which he presided and entered a ruling and forms good and just cause that these orders compelling compliance be vacated; and that in the interest of justice, all orders entered by Judge Beaty in this and related matters be vacated. The reasonable man will find little comfort in a settlement presided over before a biased judge, even if it was 'discussed in open court in the presence of both parties'.

The concern is further magnified by the fact that *(1) The Plaintiffs are* ***pro se*** *(2) The Judge is believed to be biased against the pro se Plaintiffs and (3) The defendants are represented by (by description of the court) one of the most prestigious law firms in North Carolina.*

Issue 4.

The court erred in its failure to ascertain the Sep 23' court's use of its superior position to adversely effect a settlement upon *pro se* Plaintiffs which was not fair, mandating that the settlement conference include all matters including those in other (state and bankruptcy court) proceedings.

Judge Beaty made clear that the settlement conference was to include all matters and that he would not approve a settlement agreement which was not all inclusive. The settlement agreement was not voluntary as to those claims which are now subject to an order compelling actions to dismiss claims in other jurisdictions.

Issue 5.

The court erred in denying plaintiffs' motion for a more definite statement and making a determination that the settlement is substantially unfair, and on that basis alone plaintiffs should not be compelled to comply with the order. An agreement including a sum certain amount was never made, nor announced: in violation of N.C. Gen Stat § 6-21.2 which limits attorney fees to 15% nor reduced to writing in violation of the NC Statute of Frauds N.C. Gen Stat § 22-2

It is well established that enforcement of a settlement agreement is inappropriate when the resulting settlement is substantially unfair. *Petty v. Timken Corp.* 849 F.2d 130 (4th Cir 1988) It is self-evident that an agreement which lacks sum certain dollar amounts as a value for real property to be transferred too ambiguous to be enforced whether the contract is written or oral. The absence of sum certain dollar amounts prevent compliance with reporting requirements of the Internal Revenue Service in addition to being facially absurd.[2]

File documents in this case establish only that the original note was in the amount of $267,000.00 and was secured by an appraised value of $410,000.00. While no accounting has been made for the $143,000.00 'windfall' by Ameriquest; the order of the court compels further transfer

---

[2] Ameriquest has utterly failed to provide any documentation whatsoever, including a Form 1099 required for filing of Form 1040 by plaintiffs, and this failure is further exacerbated by the order of the court that plaintiffs convey title of yet another parcel of real property for "real value" rather that a sum certain amount. This amounts to some twilight zone reasoning which is so substantially unfair that further elaboration is omitted.

of real property without sum certain accountability; and any set-off amounts which would appear reasonable for plaintiffs claims against defendant Ameriquest. This 'settlement' is one-sided; providing Ameriquest with monstrous amounts which are, by court order, unaccounted for and leaves the blame (liability) publically that of the plaintiffs in spite of a mutual agreement denying liability by both parties.

Issue 6.

The court erred in assuming jurisdiction over a settlement agreement (contract) which has its basis in North Carolina State law, and while it may be announced in open court, finds its jurisdiction to be that of the State of North Carolina and *inter alia* N.C. Gen Stat § 22-2 and §6-21.2

The court subverts the North Carolina Statute of Frauds (N.C.Gen Stat § 22-2) which requires contracts involving conveyance of real property be in writing. In pretzeled reasoning, the court went outside North Carolina law to support (and make new law for) their position. The legislative purpose of the NC Statute is to prevent fraud of just the nature of this agreement which provides for a transfer of real property without sufficient detail which must include a sum certain dollar amount for the property being conveyed. Regardless of source, an agreement lacking sum certain dollar amounts are facially fraudulent: AND YES!!! this order would enforce fraud.[3]

[3] Tragically, this is not the first time that the MDNC has attempted to wrap itself in infallibility having denied due process in a matter involving these plaintiffs. This would constitute a dangerous precedent for the courts, that legislated mandates may be avoided so long as the violation takes place in a courtroom. This would supplement the failure

(Continued on following page)

Issue 7.

The District Court erred, denying due process to appellants, by compelling acts by the plaintiff/appellants arising from orders and agreements made by presiding Judge Beaty, who subsequently recused himself on motion by plaintiff/appellants for bias.

Supporting Facts and Argument:

A. Judge Beaty had a duty to recuse, prior to motion by plaintiffs, based upon bias which could not have been known to plaintiffs, but could have and should have been known to him. The existence of bias was learned from Superior Court Judge Rand (Superior Court, Orange County, North Carolina) who based upon his clerkship with Judge Beaty several years prior caused Judge Rand (who was unknown to plaintiffs) to advise of factual background and offer to recuse himself from the state court proceeding. The factual basis which caused a state judge to offer to recuse based upon his service *several years prior* as a clerk is so profound as to poison the integrity of every proceeding over which Judge Beaty presided and form a solid factual and legal basis to vacate each and every order entered by Judge Beaty.

---

of Judge Beaty to follow the F.R.Civ.P. in the hijacking which took place in a matter earlier before this court [03-1952 Clayton v. Ameriquest Mortgage (4th Cir); 1:03CV00527 (MDNC) remanded by Judge Beaty to state court as 03-SP-125 (Orange County NC) This matter was deemed 'unreviewable' as a matter of law. Now, by mandate of Judge Beaty and order of the court, plaintiffs are being compelled to dismiss this action and all claims related thereto *by the federal courts* when it was previously remanded. The only common denominator is that in each case the action ordered was adverse to the plaintiffs. A remarkable display of bias!

B. Although Judge Beaty granted plaintiffs motion to recuse; this left in place a series of orders entered by Judge Beaty which are now fruits of a poisoned tree, and from which Ameriquest derives benefit rendering the 'agreement' unfair.

There are a total of seven (7) matters for which Ameriquest would be compelled to file dismissals. All are related to sanctions and/or attorney fees which were being used as a weapon against plaintiffs. Three are in state court in the form of motions:

(1) 03-CvS-760 (Superior Court, Orange County NC) Motion for sanctions

(2) 03-CvS-760 (Superior Court, Orange County NC) motion for attorney fees

(3) 03-SP-125 (Superior Court, Orange County NC) motion for sanctions

(4) 02-82063 (Bankr. MDNC) Motion for Sanctions

(5) 03-82095 (Bankr MDNC) Motion for Sanctions

(6) 02-82063 (Bankr MDNC) Satisfaction of Judgment for sanctions monetary award upheld on appeal by Judge Beaty and to which Judge Beaty added attorney fees

(7) 03-CV-527 (MDNC) attorney fees award by Judge Beaty in matter remanded to state court as 03-SP-125 (Superior Court, Orange County, NC)

Clearly the cases involving Judge Beaty are tainted by bias for plaintiffs and his awards of attorney fees and

monetary sanctions against plaintiffs should be vacated, not dismissed as ordered by the instant order on appeal. Denial of due process was by a method of deprivation of plaintiffs ability to prosecute their claim by threat and actual awards of money to Ameriquest. Further, all attempts by plaintiffs to consolidate their claims in one court was unsuccessful. A motion for joinder of claims and remedies (Doc # 112) *was filed on June 12, 2003*, and not acted upon by the court until found moot by reason of the 'settlement agreement' made under the cloud of bias on 23 Sep 03. The plaintiffs Motion to transfer to State Court (Doc # 139) entered 6 Oct 2003 was found moot as a result of this order to compel settlement. Plaintiffs were stuck, and the atmosphere under which the settlement conference took place was one of utter futility for the plaintiffs, and one of which the court took full advantage.

Issue 8.

The settlement agreement announced in open court took place under duress, lacks essential elements for a contract and was presided over by a biased Judge. As such any agreement, even if containing sufficient specificity is voidable.

The underlying factual basis for claims and remedies are not set out in the order, and are summarized here.

The fundamental case is one of Breach of Contract. Plaintiffs allege that Ameriquest breached its implied covenant to deal fairly when it issued a counterfeit check in the name of Plaintiff Haywood Clayton; that Ameriquest engaged in hostile and abusive behavior toward the Plaintiffs and when Plaintiffs indicated a desire to payoff the contract and no longer do business with defendant,

Ameriquest: that Ameriquest refused requested payoff amounts by Plaintiffs and when later supplying information to a lender with whom Plaintiffs had engaged to provide a new mortgage loan: willfully and intentionally supplied false information to that lender to damage Plaintiffs. When Ameriquest failed to comply with North Carolina General Statutes and obtained a foreclosure order in violation of those laws assisted by false representations in open court and in documents submitted to the state court; Plaintiffs filed a series of Bankruptcy cases to stop the illegal sale of their property, finally the original foreclosure order dismissed over two and one-half years later with the state court sanctioning the substitute trustee; but refusing monetary damages for Plaintiffs expenses and costs for their two and one-half year defense against the predatory practices of the defendant and their counsel (substitute-trustee)[4]

Issue 9.

The court erred and lacks jurisdiction to order action in state court matters

There are a total of seven (9) matters for which Plaintiffs would be compelled to file dismissals. Five (5) are in state court where this court lacks jurisdiction and four (4) are in Bankruptcy Court where a withdrawal of

[4] It has continued to pass the understanding of the plaintiffs that they have had to bear the expense for all legal costs and expenses for over 2.5years, for blatant falsehoods, while the Bankruptcy court granted to Ameriquest sanctions against plaintiffs for stopping the illegal sale of their property. On appeal, Judge Beaty upheld these awards, which are now subject to question based upon his recusal and bias.

reference is required prior to the district court regaining jurisdiction as follows:

(1) 00-SP-71 Motion for Sanctions

(2) 00-SP-71 Motion to Amend Order

(3) 03-SP-125 Motion for Sanctions

(4) 03-SP-125 Appeal

(5) 03-CvS-760 Complaint v Ameriquest for Remedies in 03-SP-125

(6) 01-83187 (Bankr MDNC) Motion to Vacate Order of Dismissal and Amend

(7) 00-81622 (Bankr MDNC) Motion to Vacate Order of Dismissal and Amend

(8) 01-83187 (Bankr MDNC) Motion for Sanctions

(9) 00-81622 (Bankr MDNC) Motion for Sanctions[5]

The foregoing is provided for specificity which was lacking at the settlement conference, and for which the district court has denied to provide a specific statement.

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[5] In each matter (6)-(9); the factual basis for claims is that in each case Ameriquest filed motions to lift the automatic stay in order to foreclose on the property of the plaintiffs during the 2.5year period that ended with a dismissal of the foreclosure (00-SP-71) and sanctions against the substitute trustee. Although finding that Ameriquest had violated NCGenStat; sanctions were not entered against Ameriquest. Further, no award of costs or expenses to plaintiffs. Clearly Ameriquest had no legal basis in support of their motions for relief to proceed with an illegally obtained order.

Issue 10.

The District Court erred in its failure to protect valid claims of a *pro se* litigant from the procedural niceties and legal maneuvering denying them their day in court.

The Fourth Circuit has set out standards by which *pro se* advocates be protected by the court from the shenanigans which have taken place in this instant case. *Beaudett v. City of Hampton* 775 F.2d 1274, 1277 (4th Cir 1985) set out these standards which were not met in this matter giving rise to an unfair 'agreement'; a hostile atmosphere; and an apparent bias against the *pro se* plaintiffs giving rise to the ambiguity and 'agreement' now before this court for review.

SUMMARY OF ISSUES AND ARGUMENT

The plaintiff/appellants submit the foregoing as good and just cause request this court to reverse the orders of April 5, 2004 and June 18th 2004 which compel Appellants comply with the agreement announced in open court on Sep 23rd 2003 for which detail and specificity are missing. Further, in the interest of judicial economy, Appellants request that this court vacate each and every order entered into any proceeding named and arising in this proceeding, and that the district court enter an order transferring this case to the Superior Court for Orange County, Hillsborough, North Carolina.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
1:02CV00415

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON	)
Plaintiffs	)
v.	)
AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; MORRIS, SCHNEIDER & PRIOR, LLC	)
Defendants	)

MEMORANDUM TO THE COURT

(Filed August 29, 2005)

COME NOW, Plaintiffs, Haywood M. Clayton and Sylvia K. Clayton showing unto the court pursuant to orders of this court entered 24 August 2003 rendering moot Plaintiffs' Motion for Stay as it related to an order of the court compelling entry of certain dismissals, withdrawals and other actions set out. The Plaintiffs submit to the court that these actions have been completed in compliance with the order of the court as attached herewith as soon as practicable following the orders of the court rendering moot Plaintiffs' motion for stay.

File stamped copies are attached herewith except for copies of Stipulation of Dismissal (which has been forwarded to counsel for Ameriquest) and a copy of the Deed for the "Open Space" which, likewise was forwarded to counsel for Ameriquest on Friday 26 August 2005.

Submitted, this the 29th day of August 2005.

/s/ Haywood M. Clayton
Plaintiff Haywood M. Clayton
PO Drawer 2255
Chapel Hill, NC 27515
(919) 990-1166

/s/ Sylvia K. Clayton
Plaintiff Sylvia K. Clayton
PO Drawer 2255
Chapel Hill, NC 27515
(919) 990-1166

NORTH CAROLINA **ORANGE COUNTY**	**IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 03-SP-125**

IN THE MATTER OF THE FORECLOSURE OF THE DEED OF TRUST Dated February 8, 1999, and Recorded in Book 1874, Page 473 in the Orange County Registry, Executed by HAYWOOD M. CLAYTON and wife, SYLVIA CLAYTON, By BARDEN W. COOKE, Substitute Trustee.

NOTICE OF WITHDRAWAL OF MOTION FOR SANCTIONS

(Filed Aug. 29, 2005)

COME NOW, Haywood M. Clayton and Sylvia K. Clayton pursuant to an Order of the US District Court for the Middle District of North Carolina [Case No. 1:02CV00415 (Doc# 156)] of April 5, 2004 and subsequent order denying Motion for Relief of 24 August 2005 ordering their Notice of Withdrawal of their Motion for Sanctions filed with this Court on July 8, 2003, with prejudice to refiling as it relates to Ameriquest Mortgage Company.

This the 29th day of August 2005.

/s/ Haywood M. Clayton
Haywood M. Clayton
Pro Se
PO Drawer 2255
Chapel Hill, NC 27515
(919) 990-1166

/s/ Sylvia K. Clayton
Sylvia K. Clayton
Pro Se
PO Drawer 2255
Chapel Hill, NC 27515
(919) 990-1166

* * *

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party (if more than one party, then counsel for each party) in the above-captioned action with the foregoing **Notice of Withdrawal of Motion for Sanctions** by depositing in an official depository under the exclusive care and custody of the United States Postal Service, a copy, in a postpaid, properly addressed envelope pursuant to Rule 5 of the Rules of Civil Procedure. The name and address of each attorney served appears below. Additional Service by [HAND DELIVERY and/or FAX if indicated]

Stuart C. Gauffreau
D. Beth Langley
Nexsen, Pruet, Adams, Kleemeier PLLC
PO Box 3463
Greensboro, NC 27402-3463

This the 29th day of October 2003.

/s/ Haywood M. Clayton
Haywood M. Clayton
Pro Se
PO Drawer 2255
Chapel Hill, NC 27515
(919) 990-1166

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEF WITH ATTACHMENTS

Re: 05-2011 Clayton v. Ameriquest Mortgage

INFORMAL BRIEF

1. **Jurisdiction (for appellants only)**

   A. What is the name of the court from which you are appealing? United States District Court for the Middle District of North Carolina

   B. What is the date(s) of the order or orders you are appealing? 24 August 2005

2. **Timeliness of appeal (for prisoners only)**

   When did you give your notice of appeal to a prison officer for mailing to the United States District Court? Enter the exact date:

3. **Issues on Appeal**

   Use the following spaces to tell the United States Court of Appeals for the Fourth Circuit why the judgment under review should be affirmed, reversed, or vacated and remanded. Appellants must provide a brief summary of the facts and arguments that support their position that the judgment under review was wrong. Appellees may rely on the facts and law stated in that judgment or may advance alternative grounds for affirmance or dismissal. The parties may cite case law, but it is not required.

Issue 1.

Please see attachment

Supporting Facts and Argument.

Please see attachment

Issue 2.

Please see attachment

* * *

Plaintiffs defaulted on their loan permanently damage the Plaintiffs and make a return to the status quo ante on 9/23/03 in order to enforce the agreement announced in open court on that day impossible.

Ameriquest has been openly duplicitous in dealing with 03-SP-125; asking the District Court to compel the Plaintiffs to dismiss their state court responsive pleadings pursuant to 03-SP-125 (citing the 'settlement agreement' as authority) while taking property; imputing liability and damaging the Plaintiffs by leaving 03-SP-125 in place for their selfish and punitive benefit.

No better example of this ambiguity exists than that of the status of 03-SP-125; which the District Court has under advisement following the hearing on September 6, 2005. Simply put: the District Court (while harshly admonishing Plaintiffs for failure to comply with the 'settlement agreement' and the order of the court to take certain actions) *could not on 6 September 2005 rule in open court as to whether or not state case 03-SP-125 was covered by*

the 'agreement' and the Plaintiffs to dismiss actions attendant to – that case in state court!![3]

Issue 2.

The District Court erred in its order [Doc # 201] entered 24 August 2005 by United States District Judge N. Carleton Tilley, Jr. Denying (1) Plaintiffs' Motion for a Change of Venue [Doc # 176] (2) Plaintiffs' Motion to Vacate Orders [Doc # 183] (3) Plaintiffs' Motion for Relief from Order of This Court [Doc # 187] which rendered Moot (4) Plaintiffs' Motion for Stay on Motion for New Judgment [Doc # 189] and setting a hearing on Defendant's Motions [Doc # 171 and # 174] by *misapprehending the facts in the case and error in law.*

[3] The Plaintiffs have been fully forthcoming in the District Court regarding this state case [03-SP-125] Ameriquest has maintained that it is *not* covered (in federal court) and that they are entitled to the benefits of the foreclosure while Plaintiffs were compelled to dismiss all appeals and other legal defenses to the foreclosure action. Curiously, Ameriquest and the Substitute Trustee (Barden Cooke) have asserted that the matter *was covered* by the settlement agreement in state court, and been the beneficiary of a favorable ruling thereunder in state court. The District court has remained conspicuously silent when asked by Plaintiffs to rule with specificity on these ambiguities. Plaintiffs moved the court for a more definite statement [Doc # 158 4/15/04]; denied in an order of the court on 6/18/04 [Doc # 163] and again * * *

Supporting Facts and Argument:

The underlying case (1:02CV00415MDNC) is factually set arising from alleged prior breach of contract [Doc # 1] by Ameriquest in May 1999: [1]a counterfeit check issued by Ameriquest in

* * *

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Case No. CA-05-2011

HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON, Plaintiffs-Appellants, v. AMERIQUEST MORTGAGE COMPANY; LAWRENCE S. MAITIN; and MORRIS, SCHNEIDER & PRIOR, LLC. Defendants-Appellees.	**APPELLANTS, HAYWOOD M. CLAYTON and SYLVIA K. CLAYTON'S RESPONSE AND OBJECTION TO APPELLEE AMERIQUEST MORTGAGE COMPANY'S MOTION TO DISMISS APPEAL AND FOR SANCTIONS** (Received October 24, 2005)

COME NOW Plaintiffs, Haywood M. Clayton and Sylvia K. Clayton responding and objecting to Appellee, Ameriquest Mortgage Company's Motion to Dismiss Appeal and for Sanctions. The Appellants' appeal is well grounded in fact and law; raises issues of law critical to public policy and due process as guaranteed under the Constitution of the United States; raises new issues arising from this instant case which if upheld (or not) upon appellate review will constitute and establish new law and powers for the District Court. In support of their response and objection, the Appellants show unto the court as follows:

1. Pursuant to a settlement agreement between defendants Lawrence S. Maitin; and Morris, Schneider & Prior, LLC and the Plaintiffs-Appellants announced in open court on 23 September 2003 and subsequently

reduced to writing: Ameriquest Mortgage Company is the lone remaining defendant.

* * *

(default) which was explicitly denied in open court on 9/23/03. It creates the specter of the alleged 'deficiency' (another liability to the Plaintiffs) and the subterfuge defense by Ameriquest for their failure to comply with the tax statutes cited later. Finally, the failure by Ameriquest to dismiss 03-SP-125 and allegations to many in the public forum that Plaintiffs defaulted on their loan permanently damage the Plaintiffs and make a return to the status quo ante on 9/23/03 in order to enforce the agreement announced in open court on that day impossible.

Ameriquest has been openly duplicitous in dealing with 03-SP-125: asking the District Court to compel the Plaintiffs to dismiss their state court responsive pleadings pursuant to 03-SP-125 (citing the 'settlement agreement' as authority) while taking property; imputing liability and damaging the Plaintiffs by leaving 03-SP-125 in place for their selfish and punitive benefit.

No better example of this ambiguity exists than that of the status of 03-SP-125; which the District Court has under advisement following the hearing on September 6, 2005. Simply put: the ~~D~~istrict Court (while harshly admonishing Plaintiffs for failure to comply with the 'settlement agreement' and the order of the court to take certain actions) *could not on 6 September 2005 rule in open court as to whether or not state case 03-SP-125 was covered by*

the 'agreement' and the Plaintiffs to dismiss actions attendant to that case in state court!![3]

[3] The Plaintiffs have been fully forthcoming in the District Court regarding this state case [03-SP-125] Ameriquest has maintained that it is *not* covered (in federal court) and that they are entitled to the benefits of the foreclosure while Plaintiffs were compelled to dismiss all appeals and other legal defenses to the foreclosure action. Curiously, Ameriquest and the Substitute Trustee (Barden Cooke) have asserted that the matter *was covered* by the settlement agreement in state court, and been the beneficiary of a favorable ruling thereunder in state court. The District court has remained conspicuously silent when asked by Plaintiffs to rule with specificity on these ambiguities. Plaintiffs * * *

* * *